FAIRNESS
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OBJECTIVITY
ACCOUNTABILITY

REPORT TO THE ONTARIO MINISTER OF CITIZENSHIP AND IMMIGRATION

Review of Appeal Processes from Registration Decisions in Ontario's Regulated Professions

Submitted by
GEORGE M. THOMSON
November 2005

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Une publication équivalente est disponible en français sous le titre *Examen des processus d'appel des décisions en matière d'inscription dans les professions réglementées de l'Ontario, 2005*.

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November 2005

The Honourable Mike Colle
Ontario Minister of Citizenship and Immigration
MPP Eglinton-Lawrence
Ministry of Citizenship and Immigration
6th floor, 400 University Avenue
Toronto, ON M7A 2R9

Dear Minister Colle:

I am pleased to enclose my report on appeals from the registration and licensure decisions of Ontario regulatory bodies that oversee professions and determine whether applicants shall be permitted to practise a profession in Ontario or to use specific professional designations. The report contains my conclusions and recommendations for reform.

As you will know, I submitted the draft report on May 16th, 2005, to The Honourable Mary Anne Chambers, then the Minister of Training, Colleges and Universities. Before the design, editing and translation of the report could be completed and it could be released, responsibility for this area passed to you and the Ministry of Citizenship and Immigration, on June 29th, 2005. Accordingly, at Minister Bentley's request, I am now formally submitting the final report to you.

In her referral of September 2004, Minister Chambers asked me to examine current appeal processes for registration or licensure decisions made by professional regulatory bodies of Ontario's self-regulated professions and to make recommendations for independent appeal mechanisms. Over several months, I consulted broadly, reviewed existing practices and procedures in Ontario, and considered approaches taken in other jurisdictions. I have expressed my support for your government's interest in introducing independent appeal procedures for the 36 professions that Minister Chambers referred to me, and I have set out what, in my view, should be the characteristics of a strong, independent appeal body. I have also made recommendations with respect to the internal procedures of regulatory bodies, consistent with my view that improving these procedures will minimize the number of appeals, while also making it possible for those appeals that do proceed to be well heard and resolved.

I have been greatly aided in my work by Karen Cohl and Donald Chiasson, who worked closely with me throughout the review. This report reflects our collective views. I also want to acknowledge the contribution of a committed team of government employees who have greatly supported me in this work, while also respecting my independent decision-making. And finally, I would like to thank the individuals from regulatory bodies, tribunals, community organizations, professional associations, Ontario government ministries, and others who generously gave their time in the consultation process. Their contribution was an enormous help in understanding current processes and identifying issues and potential solutions.

Some of the issues raised by those with whom I consulted were outside my mandate and generally related to access to professions by internationally educated persons. I have provided examples of these issues while also supporting the ongoing efforts of regulatory bodies, government, colleges, universities, community organizations, and employers to address access issues. I am also confident that while the procedural protections recommended in this report will apply to all applicants, whether educated in Canada or internationally, they should have an impact on improving access for international applicants. However, the issues addressed in the report represent only a part of the overall access issue.

Thank you for the opportunity to address an important part of the effort to make the procedures that govern admission to professional practice in Ontario effective and fair and fully protective of the public interest.

Yours very truly,

George M. Thomson
Advisor to the Appeals Review

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APPEALS REVIEW TEAM AND SUPPORTING PERSONNEL

Appeals Review Team

Advisor	George Thomson
Consultants to the Advisor	Karen Cohl Donald Chiasson

MTCU Personnel Supporting the Appeals Review

Lead	Arlene Woolley
Researcher	Jeff Bazayants
Legal Counsel	Elisabeth Scarff Marion Hoffer
Executive Liaison	William Forward Patti Redmond

Editorial Services

Editor	Barbara Czarnecki

EXECUTIVE SUMMARY

Context

Self-regulated professions have a direct impact on the health, safety, and quality of life in Ontario. Whether the professional services relate to health, law, accounting, engineering, architecture, teaching, or other disciplines, it is in the public interest to ensure access to the professions by practitioners who meet the entry-to-practice requirements in order to maintain professional standards.

Independent appeals of the registration decisions made by professional regulatory bodies are an important element of due process, fairness, and accountability. They are also a "piece of the puzzle" in improving access to professions by qualified internationally educated applicants.

In September 2004, the Honourable Mary Anne Chambers, Ontario's Minister of Training, Colleges and Universities, established a Review of Appeal Processes in Ontario's Regulated Professions (the Appeals Review) led by an external advisor, George Thomson. The purpose was to review the current internal and external appeals processes for registration decisions of 36 professional regulatory bodies in Ontario and to develop proposals for a standard, independent appeal mechanism.

While the issue of independent appeals arose in the context of internationally educated professionals, any proposed appeal mechanisms will, of course, apply to both internationally and Canadian educated applicants.

This report sets out the findings and recommendations of the Appeals Review. The process was guided by the following principles articulated in the mandate provided by the minister:

Fairness: Candidates should have access to an independent appeal of registration decisions based on established grounds.

Accountability: Regulators are responsible for protecting the public interest by ensuring a high standard of professional practice.

Objectivity: Competence to practise a profession should be determined according to merit-based criteria.

Transparency: Candidates should have access to clear and well-defined registration and appeal mechanisms.

Collaboration: Improving access to professions by internationally educated professionals requires collaboration among regulators and others while respecting their unique roles and mandates.

The Advisor to the Appeals Review articulated an additional principle:

> **The best independent appeal process is one that does not need to be used often. We should therefore promote good internal processes within regulatory bodies that reduce the demand for independent appeals and that lay the foundation for effective appeals when they are needed.**

Key Findings

Following a process of research, consultation, and analysis, the Appeals Review has made key findings on the importance of independent appeals, the connection between internal registration processes and effective independent appeals, variations among regulatory bodies in their internal processes, the effectiveness of existing independent appeal mechanisms, and the experiences of other jurisdictions.

Finding 1: Importance of Independent Appeals

With regulatory bodies making decisions as important as whether individuals are permitted to practise a profession or hold themselves out as members of a particular profession, access to an independent appeal is vital. Well-developed, transparent, independent appeal mechanisms enhance public confidence in the overall registration process. Independent appeals constitute an accountability mechanism that fosters due diligence and promotes high-quality internal procedures and a concerted effort to avoid or remedy errors so that appeals will not be launched. Further, although access to the courts is available in all regulated professions, through either statutory appeal or judicial review, it is not a practical or affordable remedy for many parties.

During the Appeals Review consultation, some regulators questioned whether independent appeals are consistent with the principle of self-regulation and whether well-functioning internal appeal processes would be sufficient. After considering the experience of professions currently subject to independent appeals, and recognizing that statutory appeals and judicial review already exist, the Appeals Review has concluded that independent appeals would not undermine a profession's self-regulatory status. No matter how exemplary an internal appeal process, there is still value in access to an independent appeal in cases where errors may have been made.

While independent appeals are important, there was a strong sense among the consultation participants that appeals are only a part of the solution for improving access to professions by qualified internationally educated professionals. Participants cited many other issues as fundamentally important, such as the appropriateness of entry-to-practice requirements and the need for additional courses and bridging programs to help internationally educated applicants acquire any missing qualifications. Such issues, however, are beyond the mandate of this review.

Finding 2: Relevance of Registration Processes and Internal Appeals

The Appeals Review believes that the best system is one that does not generate a large volume of appeals. It became evident during the review that registration and internal appeal or review processes are of vital importance as the "front end" of an independent appeal system. Fair registration practices, including access to internal review or appeal, will help to ensure that the independent appeal process is not overused. Further, certain elements of internal processes within the regulatory body can help to facilitate effective independent appeals when they are necessary. Therefore, the Appeals Review has looked at those elements of a fair registration process that could be considered prerequisites to an effective system of independent appeals.

Finding 3: Variations Among Professions

While Ontario regulatory bodies have similar mandates for registering or licensing qualified applicants, it became apparent during the research and consultation phase of the Appeals Review that there are many variations in their processes.

Pre-Application Requirements

In some professions, the first step is an application to the regulatory body. In others, specified pre-application requirements must be met before an application for registration can be made.

Assessment of Academic Credentials

Regulatory bodies may assess the equivalency of international academic credentials internally, through a national body, through an external service provider, or through some combination of these methods.

Language Proficiency

Regulatory bodies vary as to whether language proficiency tests are required, the nature of the tests, and how they are administered.

Examinations

Most regulatory bodies require applicants to pass a standard exam. These exams can be provincial or national and are administered by either the regulatory body or a national or other body.

Prior Learning Assessment

A few professions offer prior learning assessment and recognition (PLAR) or "competency-based" assessment. These assessments recognize professional skills and knowledge acquired through work or other experience for internationally educated individuals.

Referral to Other Programs

Some regulators refer internationally educated applicants to academic or specialized training programs to fill gaps in education, skills, or experience. Such programs, however, are not universally available despite increased government funding for bridging programs.

Registration Decision

Registration decisions are typically made by the registrar of the regulatory body although in many cases, when the registrar proposes to refuse the application, it must be referred to the registration committee. Decisions are usually made on the basis of a paper review. Regulatory bodies typically issue a written decision of refusal to the applicant with reasons, although the level of detail in the reasons can vary.

Reliance on Third Party Assessments

Registration decisions may rely on third party assessments of academic credentials, language proficiency, or examination results. Some regulatory bodies work with the third parties to ensure that effective accountability mechanisms are in place while others may not.

Access to Internal Appeals or Reviews

Most professions provide internal appeals or reviews of registration decisions. In the health professions, the registration committee conducts a review when the registrar proposes not to grant registration or licensure. Some non-health regulatory bodies follow the same route. In other professions, referral to a committee can be made upon request. Typically, internal reviews or appeals consist of a paper review, but in some professions the applicant may attend an oral hearing within the regulatory body. A few professions do not offer an internal review or appeal of registration decisions.

Access to Independent Appeals

The health professions and veterinary medicine have access to an independent appeal of registration decisions at the Health Professions Appeal and Review Board (HPARB). In addition, two non-health professions included in the Appeals Review have access to an independent appeal at the Licence Appeal Tribunal (LAT). A further appeal to the Divisional Court may be taken from decisions of HPARB or LAT.

Twelve non-health professions have no access to an independent appeal tribunal. Nine of these professions have statutory appeals of registration decisions directly to the courts; three do not. Where no appeal is available, it is possible to apply to the Divisional Court for judicial review. In a judicial review application, the court will not consider the merits of the registration application. It will consider other matters such as procedural error, bias, absence of evidence, or error of law.

Finding 4: Effectiveness of Existing Independent Appeal Mechanisms

Participants in the consultation commented favourably on the HPARB and LAT processes. The variety of review processes available – from paper review to telephone hearings to full in-person hearings – is a positive feature of these tribunals. The use of pre-hearing processes at LAT is also seen as a benefit that enables parties to focus on the issues in the appeal and to facilitate settlement when possible at an early stage in the appeal process. Pre-hearing processes are available to HPARB but appear to be used only rarely in registration appeals.

With respect to both tribunals, there are concerns about the level of training and support for adjudicators, including the level of per diem payments to attract highly qualified adjudicators. Other concerns include timeliness of the HPARB process and the general lack of support to applicants.

Regulators have indicated that appeals from the tribunals to the courts are important when there is serious concern about a tribunal decision or when significant legal or procedural issues are at stake.

Finding 5: Learning from Other Jurisdictions

A review of comparable jurisdictions did not provide a great deal of helpful information or precedents for designing independent appeal mechanisms for professional registration decisions.

One exception was the Australian *Best Practice Guide for Professional Bodies*. This document includes guidelines for establishing appeal processes in regulated professions. These guidelines suggest that informal procedures should be in place for rectifying administrative errors to reduce the need for formal appeals and that mandatory counselling and feedback should be provided to applicants before a formal appeal is considered. The guidelines suggest that following an in-house review by persons not involved in the initial assessment, applicants should have access to a review panel independent of the original assessing body.

While it is noteworthy that Quebec has established a Professions Tribunal, that body has very limited jurisdiction to hear registration appeals and hears mostly discipline appeals. In addition, Quebec has established an information service on regulated professions to assist and provide information to internationally educated individuals in navigating the admission processes of regulated professions.

Fair Registration Practices

Elements of a Fair Registration Process

In this report, "registration" means approval by a regulatory body for an individual applicant to use a professional title or to practise a profession in Ontario, whether on a full, limited, or provisional basis, with or without conditions.

When internal registration and appeal processes are effective, fair, and well understood, applicants are less likely to feel the need for an independent appeal or to feel aggrieved by a registration decision. The Appeals Review therefore recommends the following elements of fair registration practices in order to reduce the demand for independent appeals. Many of these elements are already present to varying degrees in Ontario regulatory bodies. The extent of change required to adopt these practices at any particular regulatory body may be quite modest or more substantial.

ELEMENTS OF FAIR REGISTRATION PRACTICES

Fair registration practices should include the following elements in order to minimize the volume of independent appeals and to lay the foundation for effective appeals where necessary.

Information and Support for Applicants

- accessible information about the registration and appeal processes
- published criteria for deciding whether entry-to-practice requirements have been met and examples of when exemptible requirements could be exempted
- support for applicants during the registration process, including any internal appeal or review, provided by regulators, other organizations, or both

Registration Procedures

- reasonable fees
- timeliness
- alternative ways to confirm credentials or demonstrate competency when documents are unobtainable
- access to documents held by the regulatory body that pertain to the registration application, with exceptions for public safety reasons or where disclosure would undermine the integrity of an assessment process

- training for council members and staff who evaluate qualifications and make registration decisions

Assessments by Third Parties

- procedural protections when regulators rely on third party assessments of credentials, language skills, or competency

Internal Appeal or Review

- arm's-length internal appeal or review process
- notification of the basis for the initial or proposed registration decision
- the right to a hearing or the opportunity to meet with at least one decision-maker
- the right to make written submissions

Registration Decisions and Reasons

- clear registration decisions with sufficient reasons for the decision

Rationale for Recommended Practices

Accessible Information About Registration and Appeal Processes

The requirements and processes for professional registration can be complex. Applicants who are well informed about the registration process at an early stage will be better equipped to take the necessary steps and will experience less frustration with the registration process.

Criteria for Decision-Making

When regulators are clear about the criteria used for deciding when registration requirements have been met, and when they provide examples of situations where exemptible requirements could be exempted, applicants will be better able to assess whether they have a basis for appeal. Criteria should be measurable to the extent possible. In addition, applicants may be less likely to appeal if they can see how transparent criteria were applied to their circumstances.

Support for Applicants Through the Process

Internationally educated individuals would benefit significantly from access to someone who is able to help them navigate through the process as it pertains to their own circumstances. Such support could increase the chances of success, lower frustration levels, and reduce the demand for independent appeals. Support could be provided by community organizations or professional associations in addition to or as an alternative to the assistance available through the regulatory body.

Reasonable Fees and Timelines

While it is appropriate for regulatory bodies to charge application and registration fees, the amounts should not be so large as to deter qualified applicants. In addition, registration decisions should be processed within a reasonable time.

Alternative Evidence of Unobtainable Documents

Many regulatory bodies have specific procedures to assist international applicants who cannot obtain all relevant documentation for reasons beyond their control. Such procedures provide alternative ways for qualified applicants to confirm their credentials or demonstrate their competence. and thereby increase the chance of a successful registration application.

Access to Documents on File

Information from the file held by the regulator on an individual's application can help the applicant to judge whether the application has been fairly processed, to determine whether to launch an appeal, and to formulate submissions to put forward during an appeal.

Training for Council Members and Staff

Registration decisions require more than the application of measurable criteria to the individual applicant or the exercise of professional judgment. They require the skill of evaluation, which can be challenging when dealing with applicants from a broad range of countries, educational backgrounds, and experience. Training for council members and staff involved in assessing competence to practise and in making registration decisions will help to improve decision-making capacity. Training topics can include the skill of evaluation, producing sufficient reasons for decisions, holding efficient hearings or meetings with applicants, and understanding diversity.

Procedural Protections with Third Party Assessments

In all regulated professions, the regulatory body makes the decision as to whether an applicant will be registered or licensed to practise. Regulatory bodies vary considerably, however, in the extent to which they assess qualifications directly and how much they rely on external assessments. This is an important issue because many crucial assessments (such as of international credentials, language proficiency, and competency) can be – and often are – placed in the hands of third parties. It should not be possible to eliminate procedural protections, such as the right of review or appeal, by moving a decision to a third party.

If a regulatory body relies on a third party assessment, the assessment result could be considered a decision of the regulator. An error in the assessment could therefore be challenged in an appeal of the regulator's decision. An alternative, more practical approach, however, would be for regulators who rely on third party assessments to assure themselves that basic procedural protections, such as appeals, are in place within the third party.

Arm's-Length Internal Appeal or Review Process

Applicants should have the opportunity for key registration decisions to be reviewed or appealed internally to persons within the regulatory body who were not involved in the initial decision. For an internal review or appeal to be effective, applicants need good information about the basis for the initial proposal or decision to deny registration or impose conditions.

Opportunity to Present One's Case

The opportunity to present one's case to those making the decision is powerfully linked to the perception of fairness. It can be time-consuming and costly, however, for regulators to provide applicants with full, formal hearings, particularly in professions with a high volume of applications. Therefore, when hearings are not feasible, applicants should be given the opportunity to discuss their case in a meeting with at least one decision-maker as part of an internal appeal or review process. This option would be in addition to the opportunity to make written submissions.

Clear Registration Decisions with Sufficient Reasons

An understandable decision, with reasons, in plain language and linked to the published criteria will help applicants to understand the basis for a decision to refuse registration or to impose conditions by a professional regulatory body.

Achieving Fair Registration Practices

It will take a concerted effort by government, regulators and others to implement fair registration practices where they do not currently exist. The following measures should ensure that the objective of having fair and effective registration practices is achieved across the regulated professions.

- Establish a Fair Registration Practices Code in statute or regulation that sets out basic requirements for all regulators in the registration process.
- Collect, verify, disseminate, and update promising registration practices and innovative techniques regulators can consider as ways to achieve the Code requirements.
- Pilot test and evaluate different ways to achieve certain elements of fair registration, such as providing support to applicants, allowing meetings with at least one decision-maker, and conducting reviews of registration practices.

- Develop how-to guides and other supports for regulators in achieving certain elements of fair registration, such as guidelines on developing measurable criteria for deciding whether registration requirements have been met, criteria for reviews of registration practices, and generic or cross-sector training modules for decision-makers.
- Introduce a requirement in the Fair Registration Practices Code that regulators periodically review and make improvements to their registration practices, on the basis of the Code, the recommendations in this report, and the published inventory of innovative and promising registration practices.
- Foster collaboration between government and regulators, with government providing technical assistance and some financial support to achieve the above five measures, to ensure fair registration practices.

Bridging Programs

The availability of bridging programs for internationally educated professionals is outside the mandate of the Appeals Review. However, some programs such as International Medical Graduates – Ontario (IMGO) function as the primary route of access for internationally educated applicants and therefore merit special attention. Some participants in the consultation expressed concerns about the IMGO clinical assessment stage and the resulting placement decisions that provide access to residency and other positions. We have concluded that an appeal from clinical assessments and placements would not be appropriate or feasible. However, we believe that IMGO and other "primary route of access" programs should provide the following procedural protections where relevant to their processes:

- publication of criteria for decision-making
- constructive feedback to unsuccessful applicants on request
- training of those making clinical assessments
- support to applicants in navigating the system and assessing their options, provided by program partners or other organizations
- quality assurance mechanisms for clinical or situational assessments, such as the use of videotaping

Independent Appeals of Registration Decisions

The recommended model for an independent mechanism for the appeal of registration decisions assumes that the elements of fair registration practices – such as written decisions, sufficient reasons, and published criteria for decision-making – are in place within regulatory bodies, to reduce the demand for independent appeals and to lay the foundation for effective appeals when necessary. The model also builds on recent reform activities in Ontario to make tribunals accessible, fair, and accountable.

Grounds of Appeal and Legal Remedies

The Appeals Review recommends that applicants to regulated professions be able to appeal the following decisions to an independent appeals body, covering health and non-health disciplines:

- decisions to deny registration
- decisions to grant or deny provisional, limited, or conditional registration
- lack of registration decisions within a reasonable time
- refusals to accept or process applications

Applicants should be able to appeal registration decisions through evidence that establishes that the regulatory body made an error of law, an error of fact, or an error of mixed fact and law. These grounds of appeal would include procedural error that resulted in prejudice to the applicant, and reasonable apprehension of bias.

Applicants who appeal should be required to provide their reasons for launching the appeal.

When professional expertise is required to determine the matter under appeal, the independent appeal body should either uphold the decision or refer the matter back to the regulatory body with recommendations. When the appeal tribunal finds that an error has been made on a matter that does not require professional expertise to determine, and the tribunal finds that the applicant qualifies for registration, it could order registration of the applicant, with or without conditions. Such authority would be exercised most often in situations involving straightforward questions of fact.

Procedural Elements

The Appeals Review recommends that the following elements be included in an independent appeal process for professional registration decisions:

- clear information on the appeal process, available to applicants
- support for self-represented applicants
- established timelines for completing registration appeals
- option for applicants to choose paper review or in-person hearing
- reasonable fees that do not deter applicants
- reasonable disclosure of evidence by both parties and an opportunity for the regulator to revise its decision on the basis of new evidence prior to the appeal hearing
- pre-hearing processes to clarify or resolve issues, conducted by a separate adjudicator and not mandatory for the applicant
- flexible hearings, focusing on alleged errors, in which the tribunal can receive new evidence but can also allow the regulatory body to revise its decision in light of that evidence
- a single adjudicator, except when the Chair assigns a three-member panel for cases that raise significant, new, or difficult questions
- clear written decisions and reasons

Rationale for Procedural Elements

Clear Information for Applicants

For an appeal to be effective there must be clear, understandable, plain-language information about the process, the grounds on which a person might appeal, and the steps that should be taken to initiate and carry forward an appeal.

Support for Applicants

Self-represented applicants need some support to work their way through what can be a daunting appeal process. It is in the interests of all parties for applicants to understand when an appeal is worth pursuing, to be able to focus on the issues, to be able to pursue early resolution, and to have the capacity to articulate their cases well.

Established Timelines

Effective independent appeals require established timelines and a body with enough resources to meet them. Fixed timelines are required for filing an appeal and commencing the hearing. The Chair should establish tribunal policies that ensure decisions are released within a reasonable time.

Options for Paper Review or Hearing

Providing oral hearings in every appeal would be time-consuming and could not be justified when applicants are content with a paper review.

Reasonable Fees

Reasonable fees are an access-to-justice issue. The fee for filing an appeal should be established at a level that does not deter appeals.

Disclosure of Evidence

Disclosure of evidence by all parties prior to hearings is another practice that enhances fairness and saves resources, allowing parties to understand the evidence in advance and properly prepare for and participate in the hearing. On the other hand, disclosure requirements can be burdensome for self-represented appellants, especially those unfamiliar with Canadian practice. The requirement to disclose evidence should be applied flexibly, therefore, when appellants are self-represented. When an applicant discloses new evidence, the regulatory body should have an opportunity to revise its decision at any time before the appeal hearing.

Pre-Hearing Processes

The pre-hearing process will be helpful to narrow the issues on appeal, resolve some appeals, and weed out hopeless appeals.

Hearing Process

Although the *Statutory Powers Procedure Act* will apply to independent appeal hearings, excessive formality could pose problems for self-represented applicants and those who are unfamiliar with the Canadian legal setting. Hearings should therefore be flexible where possible although focused on the alleged errors in the registration decision. In addition, adjudicators should be trained on how to apply the SPPA requirements in a manner that makes hearings accessible for such applicants.

The independent appeal body should have the power to receive new information that the parties may present in order to render a fair and appropriate decision.

However, when such information arises at the hearing, the body should consider whether, in the circumstances, the regulatory body should be given an opportunity to revise its decision in light of the evidence.

Size of Panel

With well-trained adjudicators, it should be sufficient and more efficient for a single adjudicator to hold a hearing and render a decision in most cases. However, in cases that raise significant, new, or difficult questions, the Chair of the tribunal should have the option of assigning a panel of three adjudicators.

Clear Written Decisions

Appeal decisions should be provided in writing to the parties and should clearly express the reasons for the decision. Understandable decisions increase confidence in the independent appeal process, provide the opportunity to learn from the appeal process, and help parties to decide whether to launch a further appeal to the court.

Adjudicators

Ultimately the quality of any appeal process is dependent upon the quality of the Chair and adjudicators.

Adjudicators require expertise in decision-making and in the conduct of hearings, coupled with the ability to understand complex regulations and procedures and properly frame the issues. They also need to possess a good understanding of the permissible grounds of appeal, the standard of review, and how to recognize error.

Adjudicators should not serve on panels hearing appeals from their own profession. This practice would help to reassure applicants that the appeal is in fact independent. Such a restriction also avoids the risk that adjudicators will venture into areas requiring professional expertise and substitute their professional judgment for that of the professional regulatory body. Like judges in courts, adjudicators need not be subject experts for all matters that come before them, but they do need a number of other skills, such as the ability to hear cases fairly and to render just and reasonable decisions.

An exception may be required to allow lawyers or retired judges to hear appeals in the legal profession, in order to benefit from their legal expertise in administrative decision-making.

The Appeals Review recommends three ways to achieve a high calibre of adjudicators.

The first is to ensure transparent standards and appointment processes for the selection and appointment of independent appeal body members and a clearly defined role for the Chair. Appointments should be filled on a competitive basis. In addition, terms of appointments and renewals should be of sufficient length so that expertise gained through adjudicator training and experience in conducting hearings will not be too easily lost.

The second is to invest in good training programs for adjudicators. Training should focus on the required knowledge, including knowledge of the legal framework; the skills associated with good adjudication (or the craft of adjudicating); and an understanding of social context. The education is delivered best when all these elements are integrated and when good adult education principles are adopted. Portions of the training could be provided by the Society of Ontario Adjudicators and Regulators (SOAR), which has a proven record in this field.

The third is to provide a level of per diem sufficient to attract a pool of available, qualified adjudicators. Current per diems at HPARB and LAT appear to be low in relation to the required skills and responsibilities. Government should consider the amount of per diems in the course of implementing this report or as part of a broader review process.

Structure and Location of Independent Appeal Body

While this report places great weight on pre-appeal measures to reduce the volume of independent appeals, it is risky to assume that the overall number of appeals will diminish with the implementation of our recommendations. Many more professions will have appeal mechanisms, including some with a high volume of applicants. Further, the measures proposed in this report would increase applicants' awareness of the option to appeal and the grounds of appeal; applicants would be better supported when they consider taking advantage of appeal mechanisms; and some of the reforms at the regulator level, such as the introduction of additional, measurable criteria, would make some appeals feasible that were not before. Therefore, it is anticipated that the workload will be sufficient to justify an appeal body.

The Appeals Review considered whether to recommend a new, independent appeal body or to expand the mandate and operational capacity of one or both of the existing tribunals. On balance, in order to consolidate expertise and to avoid multiple tribunals for a relatively small workload, the preferred model is to create a new, single tribunal for registration appeals, building on the expertise of HPARB and to some extent LAT.

The Ministry of the Attorney General is the recommended ministry to be responsible for the new adjudicative agency because of its oversight of the statutory framework for administrative justice and human rights.

In the interests of efficiency, it may well be necessary to decide whether complaints appeals, where they exist, should also move to the new tribunal, in which case the bulk of HPARB's work would be handled by the new tribunal.

Reporting and Liaison

In order to learn from the experience of independent registration appeals, the Appeals Review recommends that the proposed appeal tribunal's annual report comment on systemic issues arising from appeals of professional registration decisions.

Further, to ensure that the tribunal is responsive, accessible, and effective, it is recommended that the tribunal meet at least twice a year with a multi-stakeholder group. This group would have input on matters such as tribunal policies and procedures. It would be a consultative group and could have no role in commenting on cases or substantive legal issues.

Further Appeal to the Courts

The Appeals Review recommends that, as with HPARB and LAT, appeals to the Divisional Court from decisions of the proposed appeal tribunal should be permitted. Although this avenue would rarely be used, it would be valuable for important, precedent-setting cases in particular.

Implementation

The recommended fair registration practices and independent appeal tribunal are unlikely to be achieved without a dedicated implementation mechanism. Therefore, it is vital for a defined implementation body to be created to fully implement the recommendations of this report. We estimate that the case of fair registration practices could take three years to implement.

The implementation body, with advice from the advisory committee, would be instrumental in ensuring collaboration, coordination, and support for the recommended fair registration practices. This task would include development of the Fair Registration Practices Code, designing a mechanism to collect and verify promising practices, funding and evaluating pilot projects, and designing other supports for regulators.

Activities to establish the independent appeal tribunal would include design, consultation, and start-up as well as the necessary legislative changes. They would also involve selection and training of qualified adjudicators and establishment of the stakeholder advisory committee.

Conclusion

Independent appeals of professional registration decisions are an important element of due process for all applicants and of special significance to internationally educated professionals. A concerted effort will be required by government, regulatory bodies, and others to achieve the vision that this report sets out for the benefit of qualified applicants to the professions, regulatory bodies, and, most important, the Ontario public.

Part A

Background and Context

CHAPTER 1
CONTEXT FOR THE APPEALS REVIEW

1.1 Purpose

On September 29, 2004, the Minister of Training, Colleges and Universities announced a Review of Appeal Processes in Ontario's Regulated Professions (hereafter called the Appeals Review). The Appeals Review was asked to examine current processes for appealing registration or licensure decisions made by 36 occupational regulatory bodies – the colleges and other bodies overseeing Ontario's regulated professions – and to make recommendations for independent appeal mechanisms. This report sets out the findings and recommendations of the Appeals Review.

Chapters 1 and 2 provide contextual and background information about the nature and scope of the Appeals Review.

Chapters 3, 4, and 5 describe current registration and appeal processes.

Chapter 6 considers elements of fair registration practices that can reduce the number of appeals and, where necessary, make such appeals possible. It also includes strategies for ensuring that fair registration practices are in place.

Chapter 7 briefly discusses bridging programs for internationally educated professionals.

Chapters 8 and 9 recommend elements of an independent mechanism for appeals of professional registration decisions.

Chapter 10 outlines strategies for implementation of the recommendations in this report.

Appendix A summarizes the recommendations. Appendix B lists the regulated professions, and Appendix C lists participants in our consultation. Appendix D describes experiences in other jurisdictions.

In this report, "registration" means approval by a regulatory body for an individual applicant to use a professional title or to practise a profession in Ontario, whether on a full, limited, or provisional basis, with or without conditions.

In this report, "registration" means approval by a regulatory body for an individual applicant to use a professional title or to practise a profession in Ontario, whether on a full, limited, or provisional basis, with or without conditions.

1.2 Context

The health, safety, and quality of life of people in Ontario depend on services provided by a wide range of professionals. It is in the public interest to ensure access to the professions by qualified persons who meet the standards for professional practice. With deepening skill shortages in some professions, due in part to Ontario's aging workforce and decreasing fertility rate, there is an increasing demand for skilled professionals, including qualified persons who were educated outside Canada.

Appeals of registration decisions, along with the implementation of fair registration practices, can help to ensure that qualified persons are not unfairly denied the opportunity to practise their professions in Ontario and that the people of Ontario benefit from their skills.

The Ontario government has recognized the importance of independent appeals of registration decisions as a matter of fairness, due process, and accountability for applicants and for the independent regulatory bodies that govern the professions. Appeals of registration decisions, along with the implementation of fair registration practices, can help to ensure that qualified persons are not unfairly denied the opportunity to practise their professions in Ontario and that the people of Ontario benefit from their skills.

The government also recognizes that independent appeals may be particularly important for internationally educated applicants, many of whom find it difficult to obtain recognition for their skills and experience.[1] The exclusion of persons who are qualified – or could become so with modest additional experience or training – creates a disadvantage to Ontario's economy and quality of life. Several reports have identified independent appeals of registration decisions as a "piece of the puzzle" in improving access to professions for qualified internationally educated applicants.[2]

1.3 Methodology

The Ontario government appointed George Thomson in September 2004 as an advisor, to conduct the Appeals Review.[3] The review was assisted by two consultants, Karen Cohl and Donald Chiasson. This report reflects our collective views.

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[1] Each year, approximately 120,000 immigrants choose Ontario as their new home. Over 70% of adult immigrants are highly skilled, with post-secondary education or training. Ontario Ministry of Training, Colleges and Universities, *Opening Doors: An Investment in Prosperity – Welcoming Internationally Trained Individuals into Ontario's Workforce*, Progress Report (Queen's Printer for Ontario, January 2005), page 3.

[2] Policy Roundtable Mobilizing Professions and Trades (PROMPT), *In the Public Interest: Immigrant Access to Regulated Professions and Trades in Today's Ontario* (July 2004); executive summary online at http://www.promptinfo.ca/frames3.html. Naomi Alboim and Maytree Foundation, *Integrating Immigrant Skills into the Ontario Economy: A Ten Point Plan* (Toronto: Ideas That Matter, October 2003); online at http://www.maytree.com/Publications&Resources/Publications/TenPointPlan.htm. P.A. Cumming, Enid L.D. Lee, and Dimitrios G. Oreopoulos, *Access! Task Force on Access to Professions and Trades in Ontario*, prepared for Ontario Ministry of Citizenship (Queen's Printer for Ontario, 1989).

[3] George Thomson has been a judge of the former Provincial Court of Ontario, a deputy minister in both the Ontario and federal governments, director of education for the Law Society of Upper Canada, and chair of a provincial committee on social assistance reform. He is currently senior director of the National Judicial Institute (NJI) International.

In addition, staff of the Ministry of Training, Colleges and Universities (MTCU) provided research, legal, and administrative support.

The Appeals Review conducted research on current registration and appeal processes in Ontario, developments in other jurisdictions, and previous reports and recommendations. As part of the research process, each Ontario ministry with policy responsibility for a regulated profession was asked to complete an information template with the assistance of the relevant regulatory body. The templates canvassed information on the registration process, internal and external appeals where available, and statistical information. In addition, the Appeals Review examined the results of a survey of regulatory bodies conducted by MTCU in October and November 2004.

In November 2004, the Appeals Review issued a fact sheet on the review process. The fact sheet was made available on the MTCU website and distributed to stakeholders invited to participate in the consultation. The Appeals Review also convened consultation meetings attended by representatives from the following stakeholder groups.

Consultation Meetings	Number of Organizations
Appeals tribunals[4]	2
Community organizations	7
Health regulatory bodies	18
Non-health regulatory bodies	15
Professional associations	12
Ontario ministries	12

The Appeals Review also convened informal meetings and spoke with individual regulators, tribunals, community organizations, Ontario ministries, and others to learn more and to test possible areas for reform. In addition, the Appeals Review gave stakeholders the opportunity to submit written submissions by December 15, 2004. Six submissions were received.[5]

The Appeals Review analyzed the research and consultation results to produce the findings and recommendations in this report.

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[4] The Health Professions Appeal and Review Board (HPARB) and the Licence Appeal Tribunal (LAT).

[5] See Appendix C for organizations that participated in formal consultations.

CHAPTER 2
MANDATE AND SCOPE OF REVIEW

2.1 Mandate

The mandate of the Appeals Review was to review the current appeal process for registration decisions of 36 professional regulatory bodies and to develop proposals for a standard, independent appeal mechanism. The Appeals Review was asked to recommend appeal processes that meet common standards of fairness and independence.

The mandate of the Appeals Review was to review the current appeal process for registration decisions of 36 professional regulatory bodies and to develop proposals for a standard, independent appeal mechanism.

The mandate expressed the importance of providing due process in the appeal or review of registration or licensure decisions of professional regulatory bodies, while maintaining professional standards. The mandate also requested the Appeals Review, when formulating proposals, to recognize the differences among regulated professions as well as the autonomy of occupational regulatory bodies in setting and maintaining standards of practice. In identifying independent appeal models, the Appeals Review was asked to consider how to improve the confidence of internationally educated individuals and the public in the registration or licensure process.

The mandate document set out the following principles to guide the Appeals Review:

Fairness:	Candidates who wish to challenge a professional registration or licensure decision should have access to an independent appeal process with established grounds.
Accountability:	Occupational regulatory bodies are responsible for protecting the public interest by ensuring the high standard of professional practice expected by Ontario citizens.
Objectivity:	Competence to practise a profession should be determined according to merit-based criteria.
Transparency:	Candidates for professional registration or licensure should have access to clear and well-defined registration and appeal mechanisms.
Collaboration:	Improving access for qualified internationally educated professionals requires collaboration among regulators and others while respecting their unique roles and mandates.

To these the Advisor added a principle communicated to participants during the consultation:

> **The best independent appeal process is one that does not need to be used often. We should therefore promote good internal processes within regulatory bodies that reduce the demand for independent appeals and that lay the foundation for effective appeals when they are needed.**

2.2 Professions Included in the Review

The Appeals Review covered 36 regulatory bodies responsible for the following professions:

Health Professions

- Audiology and Speech-Language Pathology
- Chiropody and Podiatry
- Chiropractic
- Dental Hygiene
- Dental Technology
- Dentistry
- Denturism
- Dietetics
- Massage Therapy
- Medical Laboratory Technology
- Medical Radiation Technology
- Medicine
- Midwifery
- Nursing
- Occupational Therapy
- Opticianry
- Optometry
- Pharmacy
- Physiotherapy
- Psychology
- Respiratory Therapy

Non-Health Professions

- Architecture
- Certified General Accounting
- Certified Engineering Technicians and Technology
- Certified Management Accounting
- Chartered Accounting
- Forestry
- Funeral Services
- Geoscience
- Land Surveying
- Law
- Professional Engineering
- Real Estate and Business Brokerage
- Social Work and Social Service Work
- Teaching
- Veterinary Medicine

2.3 Need for Independent Appeal Process

The government of Ontario launched this review by stating its commitment to ensuring fair, transparent, independent processes for the appeal of registration decisions for all applicants to Ontario's regulated professions. Therefore, the Appeals Review worked from the assumption that an independent appeals process from the registration decisions of Ontario regulatory bodies in the self-regulated professions ought to exist. The rationale is that well-developed, transparent, independent appeal mechanisms enhance public confidence in the overall registration process.

Well-developed, transparent, independent appeal mechanisms enhance public confidence in the overall registration process.

The importance of independent appeals of registration decisions was confirmed by many participants in the consultation, including those regulators whose decisions are currently subject to independent appeals. Independent appeals were supported for the following reasons.

2.3.1 Fairness and Due Process

It is a principle of natural justice to provide access to independent review of decisions made by statutory bodies when those decisions can seriously affect a person's life or livelihood. Regulatory bodies make important decisions that determine whether individuals are permitted to practise a profession or hold themselves out as members of a particular profession – decisions that have great significance on a personal level. The opportunity to have such decisions reviewed for error by an independent adjudicating body is part of procedural fairness and due process.

It is a principle of natural justice to provide access to independent review of decisions made by statutory bodies when those decisions can seriously affect a person's life or livelihood.

2.3.2 Accountability in the Registration Process

Independent appeals constitute an accountability mechanism that fosters due diligence and promotes high-quality procedures and a concerted effort to avoid or remedy errors so that appeals will not be launched. Further, the decisions of an independent appeal body can provide guidance on how to improve existing policies and procedures so that appeals are not necessary. Some regulators said that decisions from independent appeals have helped them to improve policies and procedures.

2.3.3 Perception of Independence

Several participants in the consultation commented on the reassurance applicants take from knowing there is recourse, if necessary, to an independent appeal away from the internal culture of the regulatory body.

2.3.4 Access to Justice

An independent appeal mechanism, if properly designed, offers applicants the opportunity to have a decision reviewed when it appears that a legal or factual error of some substance has been made. Access to the courts is available now, through either statutory appeal or judicial review. However, that is not seen as a practical, affordable remedy for internationally educated applicants in particular, who often have limited resources.

2.4 Risks of Independent Appeal Process

During the consultation, some regulatory bodies in non-health professions – who currently are not subject to appeals of registration decisions to an independent tribunal – voiced concerns about introducing such appeals in their professions.

2.4.1 Consistency with the Principle of Self-Regulation

Some regulators questioned whether an independent appeal process with respect to registration or licensure decisions would undermine the self-regulatory status of Ontario's professions. They argued that it would be wrong for a third party to make decisions that may override the profession's view of who is qualified to practise as a professional in its field.

For the legal profession, the concern is a broader one related to the need for lawyers to be free from state interference. As stated in a submission from the Law Society of Upper Canada:

> **An independent legal profession is vital to the implementation and maintenance of the rule of law in a free and democratic society. To perform its role effectively the [legal] profession must be free from inappropriate influence of or interference from the state or other bodies. Self-regulation operates to minimize such influences and interference.**[6]

We believe that the concept of independent appeal of registration decisions, particularly as proposed in this report, is not inconsistent with the principle of self-regulation.

The principles at issue here are important. However, we believe that the concept of independent appeal of registration decisions, particularly as proposed in this report, is not inconsistent with the principle of self-regulation, for several reasons.

First, the concept of an independent appeal or review is already well established in many professions.[7] The question is whether appeals would be to an administrative body or to the courts. The introduction of an administrative appeal mechanism for all professions would provide a more accessible, less costly method of independent review of registration decisions. The challenge is how to make it most effective for both the applicant and the regulatory body.

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[6] Law Society of Upper Canada to George Thomson, December 15, 2004.

[7] Although the Ontario legal profession does not have an independent appeal of registration decisions, either to a tribunal or to the courts, judicial review is available. In addition, a decision of the appeal panel of the Law Society regarding professional misconduct can be appealed to the Divisional Court.

Further, the case law clearly indicates that appeal tribunals and courts must show deference to decisions of the regulatory bodies in matters where those decisions require professional expertise. In most cases, when an appeal tribunal finds an error, the matter is referred back to the regulatory body for reconsideration. In this report we recommend that this deferential approach continue.

Finally, independent appeals of registration decisions already exist for 23 health professions and 3 non-health professions in Ontario. We are reassured by feedback from regulators in such professions that they accept the concept of an independent appeal process and their experience with it has not changed that perspective.

Chapters 8 and 9 of this report contain recommendations about the nature and role of the independent appeal body that would hear appeals of registration decisions from regulatory bodies. Both its independence and the degree of deference it would give to the professional expertise of professional regulators persuade us that it would not impair self-regulation or represent state interference in the practice of law or of any other profession.

2.4.2 Sufficiency of Internal Appeal Processes

Some regulators expressed the view that an independent appeal process is not necessary when there is a full, fair, transparent, and effective internal process in place that includes access to an internal appeal. There was also concern that a general appeal process may not work equally well for all professions, because of their varying internal processes.

This, too, is an important concern, and it coincides with our view that an important goal should be to provide internal procedures that make external appeals unnecessary in all but a relatively small number of cases. However, the existence of exemplary internal processes does not eliminate the value of access to an independent appeal in those cases – ideally very few – where errors have been made.

The existence of exemplary internal processes does not eliminate the value of access to an independent appeal in those cases – ideally very few – where errors have been made.

2.4.3 Undue Expectations from Independent Appeals

Some regulators fear that independent appeals will create delays, added expense, and frustration for applicants. They note that in the health professions, few registration decisions are appealed, and since many appeals relate to matters that are simply not appealable, the result is that most are unsuccessful.

There is merit to this concern as well. However, the concern can be alleviated by ensuring that applicants have access to clear information on what is appealable, support during the registration and appeal processes, and pre-hearing processes to clarify the issues and, where possible, resolve disputes.

These concerns do not take away the importance of having an independent appeal tribunal – both for cases where an error has been made and for its impact in fostering effective internal processes within regulatory bodies.

These concerns do not take away the importance of having an independent appeal tribunal – both for cases where an error has been made and for its impact in fostering effective internal processes within regulatory bodies.

2.4.4 Relevance to Professions Governed by Private Statutes

During the consultation, some participants asked whether independent appeals should apply to those regulatory bodies that are created by private statute and those that regulate use of a professional title but not the right to practise a profession. Such regulation of title use is known as title protection. We assumed from the mandate that the government intended independent appeals to apply to the professions that fall into these categories.[8]

This assumption is supported by several factors which suggest a public aspect to the existence and operation of these regulatory bodies. The organizations hold themselves out as groups of professionals who protect the public interest, and the public relies on the professional qualifications of members on the basis of the titles granted.[9] Further, the right to use the reserved title is a significant issue for an individual who wishes to seek employment in the field; denial of title registration can limit access to employment opportunities.[10]

For some professions in this group, the Ontario Legislature has created a right of appeal to the Ontario courts for individuals refused membership.[11] The legislature has also created an offence punishable on summary conviction in the Ontario courts for individuals using the title of CA or CGA without authority.

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8. Certified management accounting, certified general accounting, and engineering technicians and technologists are governed by private legislation and oversee title protection only. Social work and social service work, though governed by a public statute, oversees title protection only. Chartered accounting, apart from "public accounting," offers title protection under a public statute

9. For example, the Code of Professional Ethics of the Society of Management Accountants states: "A member will act at all times with: i) responsibility for and fidelity to public needs."

10. The Task Force on Access to Professions and Trades in Ontario reached similar conclusions. P.A. Cumming, Enid L.D. Lee, and Dimitrios G. Oreopoulos, *Access! Task Force on Access to Professions and Trades in Ontario*, prepared for Ontario Ministry of Citizenship (Queen's Printer for Ontario, 1989).

11. For certified management accounting, the appeal is directly to the Ontario Court of Appeal. For certified general accounting, the appeal is to the Divisional Court.

Chartered accounting, certified management accounting, and certified general accounting will all, in future, be governed by a new public statute regarding "public accounting" done by their members.[12] Since public accounting was not listed among the 36 professions subject to the review, the government will need to decide whether this profession should be subject to the recommendations of this report.

2.5 Impact on Internationally and Canadian Educated Applicants

Issues of access to professions often arise in the context of internationally educated applicants, especially in professions that receive large numbers of applications from internationally educated persons.[13] However, due process and fairness require that both internationally and Canadian educated applicants have recourse to an independent appeal. Therefore, the Appeals Review assumed that any appeal mechanisms that are proposed must, of course, apply to both internationally and Canadian educated applicants.

Any appeal mechanisms that are proposed must, of course, apply to both internationally and Canadian educated applicants.

2.6 Issues Outside the Mandate

Even among the many stakeholders who are proponents of independent appeals, there was a strong sense that appeals are only a piece of the puzzle and that other issues are vitally important, especially in improving access to professions by internationally educated applicants. For example, the Policy Roundtable Mobilizing Professions and Trades (PROMPT) submitted:

There was a strong sense that appeals are only a piece of the puzzle and that other issues are vitally important, especially in improving access to professions by internationally educated applicants.

> **The institution of arm's-length appeal mechanisms for every profession and/or across sectors of professions, while in itself a critical step, is an insufficient measure to address the systemic barriers faced by internationally educated professionals.[14]**

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[12] *The Public Accounting Act, 2004*, is due to be proclaimed later in 2005.

[13] In 2003, applications from internationally educated persons totalled over 2,000 for each of the following professions: professional engineering, teaching, and nursing. Such applications totalled 754 for certified engineering technicians and technologists and between 100 and 320 for pharmacists, physicians and surgeons, lawyers, medical radiation technologists, and dental surgeons. In professional engineering, 27% of members are internationally educated. Ontario Ministry of Training, Colleges and Universities, *Opening Doors: An Investment in Prosperity – Welcoming Internationally Trained Individuals into Ontario's Workforce*, Progress Report (Queen's Printer for Ontario, January 2005), Appendix A: Key Quantitative Indicators, pages 16-17.

[14] Policy Roundtable Mobilizing Professions and Trades, "Submission to Mr. George Thomson, Advisor to the Minister of Training, Colleges and Universities...," December 14, 2004.

During the Appeals Review, we were struck by the number of measures that are needed to improve access for qualified internationally educated applicants – such as access to training, work experience, and supports – which cannot be addressed within the mandate of this review.

For example, improved procedures by regulatory bodies or new independent appeal mechanisms will not assist an individual who needs a period of Canadian work experience but cannot find an employer to provide it. They will not assist an applicant who needs to take one or two additional courses or to acquire a few additional skills but cannot find a suitable educational or bridging program. Nor can better procedures address the concerns of some stakeholders about the fairness of particular entry-to-practice requirements.

On a positive note, we were also struck by the progress being made on these access issues through the collaborative activities of government, regulators, community organizations, educators, and employers.

CHAPTER 3
PRESENT DECISION-MAKING AND APPEAL PROCESSES

3.1 Regulatory Framework

3.1.1 Self-Regulation in Ontario

Most regulated professions in Ontario are self-governing, meaning that the authority to set standards and register practitioners has been delegated by legislation to professional bodies that are independent from government. The traditional rationale for granting such powers of self-regulation to professions is that practitioners are best qualified to ensure that proper standards of competence and ethics are maintained in order to protect public health, safety, and welfare.

In Ontario, the most common method of providing for the regulation of a self-governing profession is by legislation that establishes a profession-specific body to administer virtually all aspects of the governance of the profession.[15] These "professional regulatory bodies" are often called "colleges"; the professions are referred to as "regulated professions." In most cases, the legislation provides that the overriding duty of the regulatory body is to protect the public interest.

Regulatory bodies require that their members meet professional standards. They have the authority to:

- set standards of practice;
- set entry and training requirements;
- assess qualifications and credentials to ensure that the requirements have been met;
- register qualified applicants; and
- discipline members, including by removing the right to practise the profession.

Typically, statutory regulatory bodies propose regulations subject to the approval of the government.

In some professions, it is illegal to practise the profession or use the title of the profession without being registered with the regulatory body. For example, it is illegal to practise law without being registered by the Law Society of Upper Canada, and it is illegal for persons not registered to call themselves lawyers. The same applies for veterinarians, foresters, geoscientists, funeral directors, and land surveyors. In some professions (for example, engineering and architecture), it is legal to work without a licence as long as a licensed practitioner signs off the work.

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[15] One alternative method is used by real estate and business brokers, who are governed by a professional association pursuant to a delegated authority from the Minister of Government Services.

Under the *Regulated Health Professions Act, 1991* (RHPA), only registered members of health professions are permitted to perform certain specified controlled acts.[16] The RHPA also provides protection for the use of titles such as "doctor" and "audiologist."

In other professions, there are no restrictions on who can practise the profession but the title may not be used unless the individual is registered with the regulatory body, as is the case for social workers. As a further example, there are no legal restrictions on practising most fields of accounting (excluding public accounting) in Ontario without being registered by a regulatory body. However, to be called a chartered accountant (CA), a certified general accountant (CGA), or a certified management accountant (CMA), one must be registered with the appropriate body that controls use of the professional title, which means satisfying all of its requirements.

Three regulated professions considered in the Appeals Review are governed by private statutes: certified general accounting, certified management accounting, and certified engineering technology. These professions are governed by bodies elected entirely from their membership; that is, they do not have government appointees sitting on their councils or governing boards.

Because regulatory bodies have been granted the right under provincial law – whether by public or private statute – to regulate the professions, governments traditionally have not intervened in their internal conduct. However, the government does have a supervisory mandate and powers to safeguard the public interest. The ministers with legislative responsibility for professions are guardians of the public interest and have been explicitly given that role in the professional statutes they administer. Although regulatory bodies propose changes to their governing regulations, governments are responsible for introducing amendments to the governing legislation, passing regulations, and appointing public members to sit on the councils of regulatory bodies.

3.1.2 Regulation of Health Professions

Ontario's regulated health professions are subject to their profession-specific legislation and to the *Regulated Health Professions Act*.[17] The RHPA provides a common framework for regulating the health professions. It contains the Health Professions Procedural Code, which is deemed to be part of each health profession's constituting statute. In addition, it establishes the Health Professions Regulatory Advisory Council, an arm's-length agency of the Ministry of Health and Long-Term Care with a mandate to provide advice to the minister about the regulation of the health professions in Ontario.

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[16] For example, in the case of physicians, "setting or casting a fracture of a bone."

[17] The 23 health professions are regulated by 21 regulatory bodies.

The *Health Professions Procedural Code* requires that each profession's college have its own governing council, composed of members of the profession and the public, as well as certain specific committees to deal with complaints concerning members, registration matters, disciplinary matters, and quality assurance. The Code requires each college to have a registrar and a registration committee.

The Code sets out the procedures to be followed in cases of complaints concerning members' conduct and in the registration of new members. It provides procedures for initial application for registration to the registrar, referral to the registration committee if the registrar proposes to refuse registration or to impose conditions, appeal of a registration committee decision to the Health Professions Appeal and Review Board (HPARB), and appeal of the HPARB decision to the court. The Code sets out timelines and fair process requirements such as disclosure.

3.1.3 Independent Appeal Bodies

The Health Professions Appeal and Review Board, established by the *Ministry of Health Appeal and Review Boards Act, 1998*, is responsible for, among other things, conducting reviews and appeal hearings from decisions of the complaints and registration committees of the 21 health regulatory bodies and the veterinary college.

The Licence Appeal Tribunal (LAT) conducts, among other things, appeals of registration decisions relating to two non-health professions included in this review: funeral services and real estate and business brokerage. Therefore, in 24 of the 36 regulatory bodies considered in this review, registration decisions are subject to appeal by an independent tribunal.

Of the remaining 12 regulatory bodies, nine have appeals directly to the court and three have no external appeals for registration decisions. Where no appeal is available, however, applicants have access to the courts through judicial review applications.[18]

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[18] See section 3.5 of this report for more information on independent appeals in Ontario.

3.2 Requirements for Entry to Practice

Individuals seeking registration in a regulated profession must show that they meet the qualifications to practise in Ontario. The requirements to enter a profession vary, as each regulated profession sets out its own requirements. A number of professions have "exemptible" and "non-exemptible" requirements. Regulatory bodies have no discretion to waive a non-exemptible requirement.

Typical registration requirements[19] include:

- documentary evidence of identity
- Canadian residency
- minimum academic qualifications
- language proficiency
- supervised clinical experience or work experience
- good character
- successful completion of a provincial or national examination
- payment of a registration fee

Depending on the profession, additional requirements for registration with the regulatory body can include:

- attendance at specified lectures or presentations
- skills assessment by a licensed professional
- professional liability insurance
- currency of practice
- good standing in the home jurisdiction, when the applicant is already registered in another jurisdiction
- a health requirement

3.3 Registration Process

This section provides a brief overview of the typical process applicants must undergo to show that they meet the registration requirements, along with examples of variations among regulatory bodies.

3.3.1 Application to the Regulatory Body

Typically the registration process begins when a candidate files an application with the regulatory body and pays a fee.

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[19] Consult the relevant profession-specific legislation for the actual requirements in any particular profession.

Variations: In some regulated professions, the application is not submitted until a number of pre-application tasks have been completed. Pre-application requirements can include passing a national examination or, for internationally educated persons, assessment of the equivalency of the applicant's academic credentials.

3.3.2 Assessment of Academic Credentials

For internationally educated applicants, the evaluation of international academic credentials is an important step in registering with a regulatory body. Education is assessed to determine that it is comparable to a Canadian or other recognized professional degree. The internationally educated applicant may be required to submit diplomas or certificates, transcripts, and curricula or syllabuses of study.

Variations: Many regulatory bodies do their own assessment of academic credentials, directly or through their national organizations. Other regulatory bodies rely on academic assessments provided by external credentials evaluation services.[20] Some use external services to verify the authenticity of diplomas and degrees while assessing program content and quality of courses in-house.

3.3.3 Assessment of Language Proficiency

If their language of instruction was not English or French, many internationally educated applicants will be required to take a language proficiency test as part of the registration process.

Variations: Most professions require English or French proficiency; however, not all of them test formally for it. Some professions test language proficiency through standardized tests administered by external language testing services; others use their own professional exams as an indicator of language proficiency; some have no test at all. The College of Midwives of Ontario has its own profession-specific test of language competence.

3.3.4 Assessment of Professional Competence

Examinations are often required of registration candidates, including those educated in Canada, to demonstrate professional competency. Typically applicants have the opportunity to retry exams or to request regrading.

Variations: Some professions have provincial exams administered by the regulatory body. Others have national exams administered by a national body.[21] Some professions also have a provincial ethics and jurisprudence exam. Some professions have specific exams for internationally trained candidates as part of their method of verifying international qualifications.

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[20] Examples of external credentials evaluation services are the International Credentials Evaluation Service (ICES), the Comparative Education Service (CES) of the University of Toronto, and World Education Services Canada.

[21] Examples of national bodies are the National Certification Board of the Canadian Veterinary Medical Association, the Pharmacy Examining Board of Canada, the National Dental Hygiene Certification Board, the National Dental Examining Board of Canada, the Canadian Chiropractic Examining Board, the Canadian Alliance of Physiotherapy Regulators, and the Medical Council of Canada.

A few professions use prior learning assessment and recognition (PLAR) or "competency-based" assessment to give recognition to professional skills and knowledge that may have been acquired through work or other experience, especially for internationally educated individuals who do not have equivalent academic credentials.[22]

3.3.5 Referral to Programs to Fill Gaps in Education, Skills, and Experience

When assessments identify gaps in education, skills, or experience that must be filled before registration, the regulatory body may refer the applicant to an academic program or a specialized bridging program for internationally educated professionals where the applicant can, for example, complete an additional course, improve language skills, or gain work experience. Typically, such programs are offered by educational institutions (community colleges or universities) in partnership with relevant regulatory bodies, community agencies, and professional associations.

Variations: Courses or bridging programs are not uniformly available to fill the missing elements. In some cases, an internationally educated professional may be required to complete an entire program of instruction instead of just the courses needed to bridge the gap. The degree of testing required to gain access to bridging programs can be rigorous but varies according to the program.

3.3.6 Registration Decision

A positive registration decision is made when the regulatory body is satisfied that the requirements for registration have been met. This stage of the process is typically a paper review of the relevant documentation. The registrar of the regulatory body typically makes the registration decision, which is communicated in writing to the applicant.

Variations: In the health professions and in some non-health professions, when the registrar proposes to deny registration or impose conditions, the matter is referred to the registration committee for decision.[23] Typically, such decisions contain reasons and information on the areas where the applicant does not meet the entry-to-practice requirements.

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[22] Examples are medical laboratory technology and respiratory therapy.

[23] Two professions where the initial registration decision is made by a registration committee are forestry and certified management accounting.

3.4 Internal Appeal or Review

Several models are in place for internal review or appeal if the regulatory body proposes to deny registration. An internal "appeal" involves reconsideration of the registrar's first-level decision. In an internal "review," the registrar has not made a decision but has made a proposal that results in the matter being reviewed and determined by the registration committee or analogous committee.

3.4.1 Model 1: Automatic Referral to Registration Committee

The RHPA requires the registrar to refer to a registration committee all applications for which negative decisions are proposed, including decisions to attach terms, conditions, or limitations to a licence. The RHPA, which governs all regulated health professions, establishes a registration committee for each profession. Panels of registration committees must have at least three members; one must be a person appointed to the profession's governing council by Cabinet to bring a perspective to decisions from outside the profession. The legislation also requires the registration committee to provide applicants with the opportunity to present written submissions. Some applicants may be invited to attend a meeting with the committee, although the committee is not required by statute to grant a hearing or an opportunity to present oral submissions.

3.4.2 Model 2: Referral to Committee upon Request

Other professions (such as professional engineering, land surveying, law, social work, teaching, forestry, and veterinary medicine) do not have a legislative requirement to refer all initial negative registration decisions to the registration committee or an analogous committee. Referral is required only if the applicant requests a review of the decision or proposal. Typically there is a time limit for making such requests.

3.4.3 Variation: Oral Hearings

In models 1 and 2, the appeal or review usually consists of a paper review. Some professions, however, provide for an oral hearing that the applicant may attend.

In the legal profession, for example, the legislation states that an applicant for admission can be refused only after a hearing.[24] Candidates have the right to be heard and present evidence before a hearing panel of two lawyer benchers and one lay bencher. This is an oral hearing with the right to present evidence and be represented by counsel. An internal appeal from a decision of a hearing panel is also available on request. The appeal panel has five benchers.

In professional engineering, the legislation contemplates formal hearings by the registration committee at the internal appeal stage.

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[24] Section 27 of the *Law Society Act*. No hearing is required when the applicant has failed examinations.

The Ontario Professional Foresters Association is an example of a profession that has made a policy decision to allow oral hearings, rather than only written submissions, as part of its internal appeal process. Oral hearings in internal appeals are also available for the professions of architecture, land surveying, and chartered accounting.

3.4.4 Model 3: No Internal Review or Appeal

Three professions do not appear to have an internal review or appeal process: funeral services, real estate and business brokerage, and certified general accounting. However, all have some provision for exam rewrites or review at specified stages of the process.

3.5 Independent Appeals in Ontario

As previously noted, another area where variations exist is in access to an external, independent appeal of registration decisions.

Ontario has three types of independent appeal processes for registration matters in the professions we reviewed. One is from the health and veterinary professions to the Health Professions Appeal and Review Board and then to the Divisional Court. A second is from two professions to the Licence Appeal Tribunal and then to the Divisional Court. The third is directly from the regulatory body to the courts. In addition, where no appeal is available, applicants may apply to court for judicial review on grounds of administrative unfairness.

Professions	Current Independent Appeal in Ontario
23 health professions[25] + veterinary medicine	Appeal to HPARB + further appeal to Divisional Court
2 non-health professions[26]	Appeal to LAT + further appeal to Divisional Court
8 non-health professions[27]	Appeal directly to Divisional Court
1 non-health profession[28]	Appeal directly to the Court of Appeal
3 non-health professions[29]	No external statutory appeal for registration decisions
All	Application to Divisional Court for judicial review

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[25] The 23 health professions are regulated by 21 regulatory bodies.

[26] Funeral services and real estate and business brokerage.

[27] Teaching, social work and social service work, land surveying, professional engineering, architecture, geoscience, certified general accounting, and forestry.

[28] Certified management accounting

[29] Certified engineering technology, chartered accounting, and law.

3.5.1 Health Professions Appeal and Review Board

Registration decisions in the health and veterinary professions may be appealed to the Health Professions Appeal and Review Board (HPARB). Registration is a relatively small part of HPARB's overall workload; it has many more appeals arising from decisions on member-related complaints that have not been referred for discipline hearings.[30]

Administrative and fiscal support is provided to HPARB by the Ministry of Health and Long-Term Care through the Health Boards Secretariat, a branch of the ministry. The secretariat provides similar services to another adjudicative body affiliated with the ministry, the Health Services Appeal and Review Board. Certain services, staff, and facilities are shared between the two agencies.

HPARB Process on Registration Appeals

In the health professions, applicants have 30 days to file a notice of appeal to HPARB, indicating whether they wish to have a paper review or an oral hearing. In 2004 there were 15 hearings and 27 reviews in registration cases. The legislation does not set out a list of permissible grounds for appeal to HPARB. Nor is there any requirement that the applicant state the reasons for his or her appeal. There is no fee for filing a notice of appeal.

Within 15 days of receiving the notice, the registration committee must give HPARB a copy of the decision being appealed, the reasons for the decision, and the documents upon which the decision was based. HPARB then sends that record to the applicant.

Proceedings before HPARB are considered by a panel of one or three members. HPARB adjudicators are not members of the profession under appeal, a practice designed to enhance HPARB's independence and impartiality. It can also help to discourage panels from substituting their opinions for those of regulators for decisions requiring the exercise of professional expertise.

The *Statutory Powers Procedure Act* applies to the hearings, which generally take one to two days. The hearings are somewhat formal, with a right to present evidence and make submissions. The regulatory bodies are usually represented by lawyers, while appellants often represent themselves. The hearings are generally open to the public. New material may be accepted during the appeal. Pre-hearing processes are possible but rarely used by HPARB in registration appeals.

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[30] In 2003, HPARB disposed of 336 complaints versus 37 registration matters; in 2004, 362 complaints versus 42 registrations. Complaints appeals are not part of the Appeals Review mandate. When the government considers implementing an independent appeal mechanism for the non-health professions, it should consider whether any proposed appeal body should handle complaints appeals as well as registration appeals.

When the applicant has chosen a paper review, it is based upon the documents disclosed, any new information the applicant may provide, and any written submissions. Typically a review takes much less time than a hearing; it will be completed in hours as opposed to days. In a review, neither party appears before HPARB.

After the hearing or review, HPARB will make an order, with written reasons for its decision, which is then provided to the parties.

The applicant is responsible for the costs related to the appeal. These might include legal fees, if the applicant chooses to be represented by a lawyer; expert fees; witness fees; and travel costs. HPARB does not award costs.

HPARB does not engage in mediation and has no jurisdiction over money or awards for damages.

Remedies

HPARB can grant one of four possible remedies on registration appeals.

- Uphold the decision of the regulatory body.
- Refer the matter back to the regulatory body for reconsideration with recommendations.
- Refer the matter back to the regulatory body for registration if the applicant completes exams or training specified by the regulatory body, not the tribunal.
- Require registration if the applicant substantially qualifies for registration and HPARB finds the decision of the regulatory body to be "improper."

HPARB resolves the majority of registration cases by either upholding the decision or sending the matter back to the registration committee for reconsideration.

HPARB resolves the majority of registration cases by either upholding the decision or sending the matter back to the registration committee for reconsideration. These resolutions are often guided by the fact that matters of professional expertise are involved. The power to order direct registration is rarely used. In 2004, of the 42 registration appeals, 23 resulted in confirmation of the decision of the registration committee, and 19 were referred back to the registration committee.[31] In no cases did HPARB order registration.

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[31] Information is not available about the outcomes of the 19 cases referred back from HPARB to the regulatory bodies.

Further Appeal to the Courts

Both the applicant and the regulatory body have a right of appeal to the Divisional Court from a decision of HPARB. There have been few such cases. The court has wide powers under the legislation. It possesses all the powers of both the regulatory body and the tribunal. Despite these wide powers, the courts also show deference to professional regulators where matters of professional judgment are involved in determining eligibility for registration.

This principle of deference has been articulated by courts in several provinces and by the Supreme Court of Canada.[32]

3.5.2 Licence Appeal Tribunal

The Licence Appeal Tribunal (LAT) is an independent adjudicative tribunal created on April 1, 2000, under the *Licence Appeal Tribunal Act*. LAT hears appeals under 22 statutes. Its focus is on hearing appeals of licensing decisions related to driver's licences, residential care providers, private adoptions, collection agencies, and commercial licences of individuals and businesses. LAT hears appeals of registration decisions from several regulated sectors (for instance, motor vehicle dealerships and salespersons, travel agencies and wholesalers, design firms, registered code agencies, and septics installers).

The Appeals Review was concerned only with LAT's role in the registration decisions of the two professions included in our mandate: real estate and business brokerage, and funeral services. Cases involving these professions represent a very small proportion of the overall workload of LAT.

In the notice of appeal, LAT requests a short and clear summary of the reasons for appealing. The applicant is required to pay a non-refundable filing fee of $100. The applicant is also responsible for the costs related to the appeal. These might include legal fees, if the applicant chooses to be represented by a lawyer; expert fees; witness fees; and travel costs. LAT may make an order for costs if, on the application of a party, the tribunal is satisfied that the application for a hearing was frivolous or vexatious.[33]

LAT's Rules of Practice impose disclosure obligations on both parties.

The Chair arranges the sittings of the tribunal and appoints one member to chair each panel. Some panels are composed of three members, as required by certain statutes that come under LAT's jurisdiction, but most hearings are conducted by one member. Tribunal members are appointed by Cabinet. Members either are lawyers or have expertise related to industry and consumer interests. Members who are lawyers adjudicate complex matters of a legal nature.

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[32] College of Physicians and Surgeons of Ontario v. Payne (2002), 219 D.L.R. (4th) 350 (Ont. Div. Ct.); Brousseau v. Barreau du Québec (2001), 200 D.L.R. (4th) 509 (Qc. C.A.).

[33] Section 17.1 of the SPPA also provides for costs to be ordered.

LAT hearings are subject to the SPPA. LAT uses several measures to improve access (especially for applicants who represent themselves), reduce cost, and streamline hearings. The following promising practices of LAT can generally enhance the operation of a tribunal:

- pre-hearing conferences to narrow issues and mediation to settle issues or the entire case
- mandatory disclosure
- pre-hearing disclosure of expert reports
- a variety of hearing types: oral, electronic, and written

Pre-hearing conferences can be held in person, in writing, or by teleconference, and are generally found to be most useful when participation is voluntary. The adjudicator assigned to the pre-hearing tries to define or narrow the disagreement and resolve the issues before the hearing begins. In many cases the dispute is settled entirely at this stage.

The adjudicator assigned to the pre-hearing tries to define or narrow the disagreement and resolve the issues before the hearing begins.

The scope of LAT's authority to make orders is set out in the individual statutes providing for appeal to this tribunal.

Under the *Real Estate and Business Brokers Act*, for example, the registrar considers applications for licensure in writing. The registrar may grant a licence or issue a proposal not to grant the licence and setting out the grounds. This is provided to the applicant, who has 15 days to request a hearing before LAT. The hearing before LAT is the applicant's first formal opportunity to be heard orally. LAT has the power to substitute its opinion for that of the registrar.

The appeal from LAT to the Divisional Court (within 30 days) is provided for by the *Licence Appeal Tribunal Act*. That statute merely states that such an appeal is available. It does not specify grounds or the remedies available to the court. Therefore, the court has wide discretion about how to handle the case.

3.5.3 Appeals Directly to the Courts

Appeals directly to the courts from registration decisions of regulatory bodies are currently available to nine professions.

In several of these professions (including teaching, social work and social service work, land surveying, and professional engineering), the grounds of appeal and standard of review are generally broad (errors of fact, errors of law, or both). The courts have the statutory power to substitute their opinion for that of the regulatory body. However, as with appeals from HPARB, the courts defer to the decisions of regulatory bodies when those decisions require professional expertise.

In two of the professions (forestry and geoscience) the legislation does not set out grounds for appeal. For forestry, statutory language gives the courts broad remedies but it does not include a power to substitute its decision for that of the regulatory body. With geoscience, the legislation is silent as to remedy.

3.5.4 Judicial Review

Where statutory appeals are not available, judicial review can be used to correct errors of statutory decision-makers such as professional regulators and tribunals. Traditionally, the grounds upon which an application for judicial review may be brought are narrower than those for an appeal. The focus is on the proper exercise of statutory jurisdiction by the decision-maker rather than the substance of the decision made. In judicial review applications, the court will not consider the merits of the registration application. The court will consider other issues such as procedural error, bias, absence of evidence, or error of law.

The remedy that can be granted by courts on judicial review is narrower than that available through appeal. For example, on judicial review a court cannot substitute its decision for the decision of the regulator or tribunal it is reviewing. It can, however, negate the decision and send the matter back to the original decision-maker.

Three professions covered by the Appeals Review do not have statutory appeals to the courts for registration decisions: law, certified engineering technology, and chartered accounting. These professions have internal appeal mechanisms, but judicial review is the only route for an applicant who wishes to have a case reviewed outside the regulatory body.

The principle that deference will be shown by the courts and is required of reviewing tribunals is well established in Canadian law, and it applies to judicial review applications as well as statutory appeals.

3.6 Agreement on Internal Trade

The Agreement on Internal Trade (AIT) provides a mechanism to enhance access to professional licensure in Ontario by professionals already qualified in another Canadian province. The AIT requires professional regulatory bodies in Canada to eliminate barriers to labour mobility and to recognize qualified workers. Implementation is supported by a process that enables regulatory bodies in different provinces to enter into mutual recognition agreements to facilitate the movement of professionals within Canada. The AIT provides a non-binding complaint procedure for professionals who have been denied licensure and who believe they are qualified to practise their profession in the new province. There is also a formal government-to-government complaint procedure. The AIT does not diminish the control and accountability of self-regulating bodies over occupational standards and the assessment of individuals against those standards.

For more information on the Agreement on Internal Trade, see Appendix D.

CHAPTER 4
THIRD PARTY PROCESSES

4.1 Assessment Decisions

In all regulated professions, the regulatory body makes the decision as to whether an applicant will be registered or licensed to practise. Regulatory bodies, however, vary considerably in how much assessment of qualifications they do directly and how much they rely on external or "third party" assessments of language, academic credentials, or competency.

Third party assessments are an important factor when considering rights of appeal from registration decisions. Here are three examples of ways in which regulatory bodies may reach decisions on registration, each of which would result in a different potential scope for a subsequent appeal.

- After receiving an application, one regulatory body administers competency exams and assesses the equivalence of international credentials and experience.
- After receiving an application, a second regulatory body refers applicants to a third party to assess international credentials and administer a competency exam.
- Before a third regulatory body will accept an application, individuals must have passed a series of third party assessments.

In the first profession, an appeal from the decision of the regulatory body will be the most meaningful because it includes an appeal of competency and academic credential assessments.

In the second example, an appeal will be less meaningful. Although the applicant could appeal the regulatory body's refusal to register based on its reliance on the third party assessment, the practical impact is that it would be very hard to meaningfully review the third party's assessment within such an appeal.

In the third profession, a would-be applicant who fails external assessment actually has nothing to appeal; the regulatory body will not accept his or her application so it makes no decision on registration. Once the regulator accepts the application, registration is unlikely to be refused. Therefore, an appeal process based on the application decision rather than on the pre-application assessment is almost meaningless.

4.2 Appeal Processes at Third Parties

Many third parties have their own appeal processes. For example, external academic credential assessment services that are members of the Alliance of Credential Evaluation Services of Canada are expected to have appeal processes. These services are required to inform applicants, upon request, of the basis for assessment decisions, the options for appealing decisions, and the time limits for appealing.[34]

Some Ontario regulatory bodies work with the third party agencies to ensure that their assessment services and procedures are satisfactory. For example, in the case of international credential assessment by the national body for physiotherapy (the Canadian Alliance of Physiotherapy Regulators), the Ontario regulatory body has collaborated with the national body to develop a prior learning assessment and academic credential assessment process, and to review and evaluate the process on an ongoing basis.

4.3 Education and Bridging Programs

Third parties – such as colleges, universities, community agencies, and employers – play a role in helping applicants to fill specific gaps in their qualifications to facilitate registration or licensure, often in partnership with regulatory bodies. The Ontario Government funds many innovative bridge training models. Bridging projects may provide assessments, training, and Canadian workplace experience to help qualified individuals move into the workplace without having to repeat what they have already learned. While each bridging program is unique, they typically provide one or more of the following services for internationally educated professionals:[35]

- customized learning plans and counselling
- courses on orientation to the Canadian workplace, sector-specific language training, technical skills, academics, and exam preparation
- mentorship
- work or clinical placements, internships, or on-the-job training
- employment counselling

In our consultation the availability of education and bridging programs was seen by many participants as a key component in helping internationally educated professionals on the road to registration. The importance of such programs was underscored by a recent study which found that while education and work experience obtained abroad tends to be discounted in the Canadian labour market, "the value of each year of foreign obtained education is significantly increased when it is combined with education gained in Canada after arrival."[36]

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[34] Provincial Assessment Committee – Canada, *General Guiding Principles for Good Practice in the Assessment of Foreign Credentials* (Alliance of Credential Evaluation Services of Canada, April 1998), section 36, "Appeal"; online at http://www.canalliance.org/.

[35] Some bridging programs also include a component to assess credentials, skills, and competency.

Further, some candidates continue to fill identified gaps even after launching an appeal, and in some cases they are able to meet the registration requirements before the appeal takes place.

Notwithstanding the recent growth in bridging programs, many internationally educated professionals report difficulty in securing access to the programs they require. A common difficulty reported by regulatory bodies and by those who speak for applicants is securing access to one or two needed courses. It can be difficult for an educational institution to find the resources to meet this need, especially when the profession is small or the number of internationally educated applicants is low. Clinical or other supervised practice opportunities may also be limited both by the number of students an institution can accommodate and by the number of professionals available to act as preceptors.

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[36] Naomi Alboim, Ross Finnie, and Ronald Meng, "The Discounting of Immigrants' Skills in Canada: Evidence and Policy Recommendations," *IRPP Choices* 11, no. 2 (February 2005); online at www.irpp.org.

CHAPTER 5
MODELS IN OTHER JURISDICTIONS

The Appeals Review looked at other jurisdictions, including British Columbia, Alberta, Quebec, and Australia, that offer a structure of self-regulation and governance similar to Ontario's. With a few exceptions, we were unable to find much guidance on independent, external registration appeals from the experience in other jurisdictions. In fact, access by registration applicants to HPARB and LAT makes Ontario a leader in this area. Some interesting developments from other jurisdictions are briefly noted below. For additional information on other jurisdictions, see Appendix D.

The Health Professions Council of British Columbia issued a report in 2001 on its legislative review of 10 health professions. The report articulated the following as a core principle: "Applicants should have appropriate rights of appeal of decisions affecting their ability to register." The report further stated:

> **Six of the health profession statutes reviewed by the Council do not contain an external right of appeal, though some provide for an internal appeal, usually to the college's board. One profession submitted that an external right of appeal is an unwarranted intrusion on a regulatory body's discretion to determine who may become a member of the professions. However, the trends in recent case law indicate that courts do defer to administrative tribunals acting within their area of expertise. *Further, given the serious implications of registration decisions which involve the right to practice one's profession, a health profession statute must contain an express right of external appeal from registration decisions.*[37]**
> **(emphasis added)**

In Australia, *The Best Practice Guide for Professional Bodies* has been prepared as an aid to professional bodies that undertake assessment of applicants wishing to migrate to Australia under the Skilled Migration program.[38] The guide, currently under review, includes best practices for establishing appeal processes in the professions as part of an effective assessment process.

Quebec has established a Professionals Tribunal. However, the tribunal hears mostly discipline appeals. It hears registration appeals only upon limited grounds, such as denial because of medical condition or criminal conviction.

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37. British Columbia Ministry of Health Services, Health Professions Council, *Safe Choices: A New Model for Regulating Health Professions in British Columbia*, Part II: Legislative Review (March 2001); online at http://www.healthservices.gov.bc.ca/leg/hpc/review/part-ii/index.html.

38. Australia, Commonwealth Department of Employment, Education, Training and Youth Affairs, *The Best Practice Guide for Professional Bodies* (Canberra: J.S. McMillan Printing Group, 1997).

Quebec has established an office to assist immigrants seeking admission to professional "orders" (the term equivalent to "regulatory bodies") by providing them with the information to make informed decisions about their applications. Supporting applicants in the registration process – whether through this model or others – is one way to reduce the volume of independent appeals.

Part B

Analysis and Recommendations

CHAPTER 6
FAIR REGISTRATION PRACTICES

6.1 Registration Practices

Examining appeal processes, as the Appeals Review was mandated to do, requires a consideration of the registration processes that precede any appeal. There are several reasons why registration procedures, including internal appeals and the use of third party assessments, are an important component of the context for external appeals.

First, the nature and quality of registration processes have a direct impact on the need and the perceived need to appeal a registration decision. When internal registration and appeal processes are effective, fair, and well understood, applicants are less likely to feel the need for an independent appeal or to feel aggrieved by the registration decision. The same is true when regulators rely on third party assessments as part of the registration process.

When internal registration and appeal processes are effective, fair, and well understood, applicants are less likely to feel the need for an independent appeal or to feel aggrieved by the registration decision.

Second, an effective independent appeal process is not possible if the registration or internal appeal procedures that precede it do not have certain essential features, such as a written decision with clear reasons.

Third, it is in the interest of regulatory bodies to ensure that their own internal processes are fair and effective. In addition to improving the quality of regulatory services and decreasing the likelihood of external appeal, effective internal processes can increase the degree of deference afforded to registration decisions when considered on appeal to a tribunal or court. Many regulatory bodies have made significant progress in improving registration processes and remain open to further reforms. The *Regulators' Guide for Promoting Access to Professions by International Candidates*, published in May 2004 by Ontario Regulators for Access, and the recent *Opening Doors* report of the Ministry of Training, Colleges and Universities provide evidence of a growing commitment within the regulatory community to continuous improvement of the registration process in respect to internationally educated applicants.[39]

A good appeal process is one that does not have to be used often.

As stated earlier, a good appeal process is one that does not have to be used often. A modestly used appeal system can be an indication that the registration practices and resulting decisions are effective, and an overloaded appeal system can be evidence of flawed first-level decision-making. As stated by the Coalition for Access to Professional Engineering:

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[39] For promising practices in place or recommended by Ontario regulators, see publications of Ontario Regulators for Access at www.regulators4access.ca. Ontario Ministry of Training, Colleges and Universities, *Opening Doors: An Investment in Prosperity – Welcoming Internationally Trained Individuals into Ontario's Workforce*, Progress Report (Queen's Printer for Ontario, January 2005).

> **We believe that appeals should be seen as a last resort, once all other avenues for reconsideration and review have been exhausted. Clear information about the reasons for decisions made and opportunities for applicants to clarify and add new information about their file may go a long way to avoiding formal appeals. As well, in order for the appeals process to function effectively, the development of a more formal and effective complaints resolution and counselling process are important. This would aid in ensuring that formal appeals are used only as a last resort.**[40]

This chapter looks at elements of fair registration practices that can either reduce the need for independent appeals or create the foundation for effective independent appeals. The registration process must be – and be seen as – fair, efficient, affordable, understandable, and accessible. When registration practices meet this standard, applicants are less likely to feel the need for an external appeal.

We begin with a listing of the elements of fair registration practices. This is followed by a discussion of the steps we recommend for ensuring that this process is in place. Then each of the recommended elements is discussed with reference to which aspects of each element should be contained in a proposed Fair Registration Practices Code. Finally, the proposed Code is summarized, along with activities by regulators that will help to ensure that the objectives of the Code are achieved.

Recommendation 1
ELEMENTS OF FAIR REGISTRATION PRACTICES

Fair registration practices should include the following elements in order to minimize the volume of independent appeals and to lay the foundation for effective appeals where necessary.

Information and Support for Applicants

- accessible information about the registration and appeal processes
- published criteria for deciding whether entry-to-practice requirements have been met and examples of when exemptible requirements could be exempted

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[40] Submission on PEO Admissions Process to The Admissions, Complaints, Discipline and Enforcement Task Force, Professional Engineers of Ontario, November 1993.

- support for applicants during the registration process, including any internal appeal or review, provided by regulators, other organizations, or both

Registration Procedures

- reasonable fees
- timeliness
- alternative ways to confirm credentials or demonstrate competency when documents are unobtainable
- access to documents held by the regulatory body that pertain to the registration application, with exceptions for public safety reasons or where disclosure would undermine the integrity of an assessment process
- training for council members and staff who evaluate qualifications and make registration decisions

Assessments by Third Parties

- procedural protections when regulators rely on third party assessments of credentials, language skills, or competency

Internal Appeal or Review

- arm's-length internal appeal or review process
- notification of the basis for the initial or proposed registration decision
- the right to a hearing or the opportunity to meet with at least one decision-maker
- the right to make written submissions

Registration Decisions and Reasons

- clear registration decisions with sufficient reasons for the decision

6.2 Achieving the Goal of Fair Registration Practices

The elements of a fair registration process – in their entirety – can become a reality in a climate that fosters education of decision-makers and continuous improvement of processes, as well as innovative approaches and creative ways for ensuring good decision-making and applicant satisfaction.

6.2.1 Fair Registration Practices Code

The registration and internal appeal and review practices of regulatory bodies can reduce the volume of independent registration appeals and pave the way for effective independent appeals when necessary. Therefore, we recommend that a

Fair Registration Practices Code be established in a statute or regulation that would apply to professional regulatory bodies.

Although the regulated health professions already have a *Health Professions Procedural Code* (HPPC), registration practices constitute a relatively small proportion of the entire Code and do not address many of the requirements proposed in our recommendations

Some aspects of the Fair Registration Practices Code will require testing and experimentation, with government support, for full implementation. Further, in developing the Code, reference should be made to ISO 17024, *Conformity Assessment – General Requirements for Bodies Operating Certification of Persons*, in order to make sure that the content is consistent with international expectations for certifying the competence of persons in different professions.

It will be for government to determine whether the new Code should apply to all 36 regulatory bodies considered in the Appeals Review, including those established by private statute, or to any additional bodies.

This chapter recommends the requirements to be contained in the Fair Registration Practices Code along with steps regulators could take to ensure that it is well implemented and that its intent is achieved. These additional steps would not appear in the Code itself.

6.2.2 Promising Practices

There is value in recognizing and publicizing promising practices so that Ontario regulators can learn from one another and from experiences in other jurisdictions.

There is value in recognizing and publicizing promising practices so that Ontario regulators can learn from one another and from experiences in other jurisdictions. In recent years, Ontario regulatory bodies have collaborated to develop and share promising practices in respect to access to professions. Through goverment support, regulators should be encouraged to continue in this vein to document promising practices and to develop guidelines for fair registration processes.[41]

In particular, government, regulatory bodies, and other stakeholders should collaborate periodically to produce and publish an inventory of creative and promising methods of achieving the objectives behind measures identified in this report as part of a fair registration process. Such methods may be found within Ontario regulatory bodies or in other fields and other jurisdictions. The work should include a means of verifying that a practice is in fact "promising." There would also be value in bringing regulators together periodically to review, discuss, and learn from the innovative practices that have been collected.

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[41] See Australia, Commonwealth Department of Employment, Education, Training and Youth Affairs, *The Best Practice Guide for Professional Bodies* (Canberra: J.S. McMillan Printing Group, 1997).

6.2.3 Testing Models and Support for Regulators

It is important to fund, test, and pilot models for achieving some of the recommended fair registration practices. Suggested areas for testing include innovative ways to provide applicant support, to offer meetings with decision-makers during the internal review or appeal stage, to conduct efficient and effective hearings, and to conduct reviews of registration practices.

Funding and collaboration by government and regulators is also important to help regulators develop the skill of designing measurable criteria, create and implement competency-based assessment tools, and plan and deliver effective training programs. Particular work may be required to identify those whom regulators can call upon to assist with periodic reviews of registration practices and the development of plans to improve those practices. The emphasis should be on generic tools and supports that can then be adapted to particular professions.

6.2.4 Periodic Reviews

To facilitate continuous improvement in registration processes, each regulatory body should be required to review its processes in light of the Fair Registration Practices Code, its own experiences, and promising practices in the field.[42]

6.2.5 Government Support and Collaboration

The extent of change that the Fair Registration Practices Code will require for any particular regulatory body may be quite modest or more substantial. Most regulatory bodies would benefit from collaborate approaches and support. Government will have a significant role to play in facilitating change by collaborating with regulators and providing some funding support for pilot projects and design and developmental work.

Government will have a significant role to play in facilitating change by collaborating with regulators and providing some funding support for pilot projects and design and developmental work.

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[42] See also section 6.3.6 of this report.

Recommendation 2
ACHIEVING FAIR REGISTRATION PRACTICES

The following measures should ensure that the objective of having fair and effective registration practices is achieved across the regulated professions.

- Establish a Fair Registration Practices Code in statute or regulation that sets out basic requirements for all regulators in the registration process.
- Collect, verify, disseminate, and update promising registration practices and innovative techniques that regulators can consider as ways to achieve the Code requirements.
- Pilot test and evaluate different ways to achieve certain elements of fair registration, such as providing support to applicants, allowing meetings with at least one decision-maker, and conducting reviews of registration practices.
- Develop how-to guides and other supports for regulators in achieving certain elements of fair registration, such as guidelines on developing measurable criteria for deciding whether registration requirements have been met, criteria for reviews of registration practices, and generic or cross-sector training modules for decision-makers.
- Introduce a requirement in the Fair Registration Practices Code that regulators periodically review and make improvements to their registration practices, on the basis of the Code, the recommendations in this report, and the published inventory of innovative and promising registration practices.
- Foster collaboration between government and regulators, with government providing technical assistance and some financial support to achieve the above five measures, to ensure fair registration practices.

6.3 Content of Fair Registration Practices

6.3.1 Information and Support for Applicants

Information About Registration and Appeal Processes

The requirements and processes for professional registration can be complex. Applicants who are well informed about the registration process will be better equipped to take the necessary steps and will experi-

Applicants who are well informed about the registration process will be better equipped to take the necessary steps and will experience less frustration with the registration process.

ence less frustration with the registration process. The relevant information must be available to registration applicants and potential applicants as early in the process as possible. Ideally, it should be available to those seeking it while overseas, prior to their arrival in Canada.

The information must be easy to understand and accessible. Clear information would help to forestall misunderstanding about the distinction between assessment for immigration purposes and assessment for professional registration purposes. Clarifying this distinction can help to prevent prospective immigrants from developing unrealistic expectations about the likelihood of success in entering their professions when they arrive. Transparent information is an element of the Ontario Regulators for Access (ORA) guidelines for regulators.

Registration information must include a clear description of internal and independent appeal processes. Well-presented information can reduce the risk of frustration at the appeal stage by clarifying what can and cannot be accomplished in an appeal. For example, clear information about exemptible and non-exemptible requirements can help candidates to avoid appeals with little or no chance of success. The information should also reassure candidates that launching an appeal will not jeopardize their relationship with the regulatory body.

As noted in the Australian *Best Practice Guide*:

> **The existence of the appeals process should be widely known within the profession and should be mentioned in any preliminary information provided to those enquiring about assessment.**
>
> **The appeals process should be clearly documented, readily understandable, and available to everyone.**[43]

Through the consultation, it became clear that much is being done by regulatory bodies, often with the support of government, to find innovative ways of providing information to applicants and to assist people before they arrive in Canada. Examples include regulatory bodies' websites; career maps; and initiatives to develop a Canadian immigrant Internet portal and a specialized Internet portal for internationally educated engineers. Other initiatives include a plan to enable Canadian colleges and universities which have offices overseas to provide information, orientation, and other services to skilled immigrants before they arrive in Canada.

Several Ontario regulatory bodies have information websites for internationally educated candidates. Information tools vary from fact sheets and lists of frequently asked questions to interactive electronic fact sheets (e-fact sheets) that provide information on both the registration or licensure process and the appeals process.

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[43] Australia, Commonwealth Department of Employment, Education, Training and Youth Affairs, *The Best Practice Guide for Professional Bodies* (Canberra: J.S. McMillan Printing Group, 1997), page 20.

E-fact sheets are interactive maps. They can be used to provide a comprehensive, user-directed explanation for the stages of the registration or licensure process. Both the Ontario Association of Certified Engineering Technicians and Technologists and the Ontario College of Pharmacists, for example, have e-fact sheets on their websites that provide information on the registration process and the appeal process for registration decisions.

While many information vehicles are in place or under development, participants in the consultation suggested that more work must be done to evaluate their effectiveness from the standpoint of the user. Evaluation will help to determine if they are user-friendly, easy to access, and effective in getting the relevant information to potential applicants when they need it.

Recommendation 3
INFORMATION FOR APPLICANTS

The Fair Registration Practices Code should require regulators to make information available to applicants, including internationally educated applicants, about the registration, internal appeal, and independent appeal or review processes.

In implementing this portion of the Code, regulators should evaluate, from the perspective of the user, the effectiveness of existing measures to provide information to applicants and should consider additional ways to make information available, including to persons overseas.

Criteria for Decision-Making

In some respects, regulatory bodies have clear criteria for decision-making, notably in the specific requirements that must be met for registration: for example, holding a certain academic degree or obtaining a passing mark on a registration exam. In other areas, however, criteria may be less clear. It can be difficult for applicants – and internationally educated applicants in particular – to understand how regulators make decisions to determine whether:

- an international degree is "equivalent" to a Canadian degree;
- language proficiency is sufficient for Canadian practice;
- work conducted for an employer is sufficient to meet the requirement for Canadian work experience;

- clinical judgment has been sufficiently demonstrated; or
- an exemptible requirement can be exempted in a particular case.

The lack of clearly defined criteria for key determinations, or the existence of only vague standards against which decisions are made, can make it difficult to know the basis on which an application for registration was denied. The lack of criteria could render an appeal meaningless, since without criteria, applicants will have difficulty in assessing whether a registration decision was wrongly made, deciding whether to launch an appeal, and formulating appeal submissions. Therefore, clear criteria for making registration decisions are essential for effective appeals.

Clear criteria for making registration decisions are essential for effective appeals.

As a basic principle, criteria should be publicly available for all major areas of decision-making in the registration process, and they should be measurable where possible. Those criteria should define what actually guides the relevant decision-makers.

If certain exemptible criteria are never, in practice, exempted, regulatory bodies should develop and publish examples of when an exemption might be granted, or seek statutory change to remove the possibility for exemption.

Regulatory bodies should also provide examples of situations where exemptible requirements could be exempted. Further, if certain exemptible criteria are never, in practice, exempted, regulatory bodies should develop and publish examples of when an exemption might be granted, or seek statutory change to remove the possibility for exemption. In this way, a regulatory body will be in compliance with its statute and applicants will not be misled.

During the consultation, regulatory bodies raised the concern that requiring more complete, visible criteria could work to the disadvantage of applicants, because such criteria would reduce the discretion that now exists. The fear was that applicants would be held to a standardized set of requirements with a bar set too high, in order to ensure that unqualified candidates are not admitted. This is a legitimate concern. However, creating criteria does not mean that discretion is eliminated. Careful work will be required to identify the criteria, to make them measurable, to instruct evaluators on how to apply them, and to reinforce the ability of regulatory bodies to exercise discretion when appropriate. This is an area where government and regulatory bodies could collaborate to build the capacity to articulate measurable criteria for registration decision-making and to provide examples of where exemptible requirements could be exempted or discretion exercised to admit applicants. Discretion would be exercised when, in the opinion of the decision-maker, the applicant meets the objectives behind the criteria for admission to the profession. Good training can help reinforce the fact that discretion, well exercised, is part of the skill of decision-making.

Recommendation 4
CRITERIA FOR DECISION-MAKING

The Fair Registration Practices Code should require regulators to publish:

- criteria they will use for deciding whether entry-to-practice requirements have been met; and
- examples of situations where exemptible entry-to-practice requirements could be exempted.

In implementing this portion of the Code, regulators should:

- review and clarify criteria for decision-making, and ensure that published criteria are understandable and measurable where possible;
- provide examples of where exemptible requirements could be exempted, or seek statutory change to make non-exemptible any currently exemptible requirements that, in practice, are never exempted.

With government support, training or how-to-guides should be developed that would assist regulators in developing and publishing criteria for decision-making.

Support for Applicants

Registration and bridging processes are complicated, especially for internationally educated applicants who may need assessments of academic credentials and language proficiency, access to clinical or employer placements, and special courses to bridge gaps in qualifications. Internationally educated individuals would benefit significantly from access to someone who is able to help them navigate through the process as it pertains to their own circumstances. Such support could increase the chances of success, lower frustration levels, and reduce the demand for independent appeals. It could also result in the informal resolution of some issues that might otherwise have ended up in an appeal.

> ***Internationally educated individuals would benefit significantly from access to someone who is able to help them navigate through the process as it pertains to their own circumstances.***

Support to applicants could include helping people to understand requirements, complete applications, and prepare presentations for internal reviews or appeals. In some cases, the regulator may be the appropriate body to provide support; in others, support could be better or more appropriately provided by a community organization or professional association.

The Appeals Review consultation brought to light different models for providing support to applicants. For example, the Ontario College of Teachers is the lead partner in a pilot project called "Teach in Ontario." One component of the project is the establishment of consultation centres to provide support to 2,000 internationally educated teachers in the Greater Toronto Area and 200 in Ottawa.

The Ontario College of Pharmacists offers counselling and coaching to help applicants prepare written submissions when the registrar forwards their applications to the registration committee.

Other examples are found at the community level within community organizations. The Association of Internationally Trained Physicians and Surgeons of Ontario (AIPSO), a modestly resourced advocacy body, offers advice and assistance to internationally educated physicians in understanding their options. Some community legal clinics assist internationally educated professionals with registration issues and appeals.

The Quebec government has established an office to provide centralized information and assistance to internationally educated individuals in navigating the admission processes of all regulated professions.[44]

We are not able, nor do we feel it is appropriate, to identify one method of supporting applicants that is most effective for all professions. Rather, this is an area for innovative methods; some will involve the regulator directly and others will be more independent. The challenge is to find effective but also affordable methods of helping applicants through what can be complex and difficult procedures. Here, too, regulators and government can collaborate in developing and testing different approaches.

The challenge is to find effective but also affordable methods of helping applicants through what can be complex and difficult procedures.

Recommendation 5
SUPPORT FOR APPLICANTS

With government support, different ways of supporting applicants during the registration process, including through outside organizations, should be tested.

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[44] See Appendix D: Other Jurisdictions.

6.3.2 Registration Procedures

Reasonable Cost

Regulatory bodies are funded by member fees, not by government. It is appropriate for regulatory bodies to ask that the reasonable costs of the registration process be covered through application and registration fees. However, it is also important to ensure that the process is not so costly as to deter qualified applicants from pursuing registration or appeals of registration decisions. Reasonable fees are an element of the ORA guidelines for regulators.

Recommendation 6
REASONABLE COST

The Fair Registration Practices Code should require regulators to ensure that application and registration costs are reasonable so they do not deter qualified applicants from pursuing registration or appeals of registration decisions.

In implementing this portion of the Code, regulators should review fees for reasonableness.

Timeliness

An obligation that attaches to the privilege of self-regulation is that it should be possible to reach decisions within a reasonable time. Most regulatory bodies appear to be able to make decisions expeditiously once they have the relevant documentation in hand. But delays can be an issue, especially in high-volume bodies. Delays can arise because of:

- the challenge of assessing increasing numbers of internationally educated applicants;
- regulatory provisions that unnecessarily lengthen the process, for example by requiring the regulatory body to consider requirements consecutively rather than concurrently;
- lack of documentation from applicants; or
- a lack of resources in the regulatory body to meet the overall demand.

Recommendation 7
TIMELINESS

The Fair Registration Practices Code should require regulators to establish and publish times within which the registration process should be completed.

In implementing this portion of the Code, regulators should set and publish timelines and develop policies and practices to ensure that the timelines are met and registration is completed within a reasonable time.

Alternative Evidence of Unobtainable Documents

Some applicants – for reasons beyond their control – are not able to provide documentation regarding their academic history. Many regulatory bodies have specific procedures, such as statutory declarations or affidavits, to assist international applicants who cannot obtain all relevant documentation. Such procedures can help qualified candidates to achieve registration with less frustration. Without alternative methods of providing evidence, qualified applicants will be unable to proceed to an evaluation of their competency to practise.

Recommendation 8
ALTERNATIVE EVIDENCE OF UNOBTAINABLE DOCUMENTS

The Fair Registration Practices Code should require regulators to offer alternative methods of confirming credentials or demonstrating competency where relevant documents cannot be obtained for reasons beyond the applicant's control.

In implementing this portion of the Code, regulators should design and implement alternative processes where they do not currently exist.

Access to Documents on File

Information from the regulatory body's file on an application for registration can shed light on the processing of the application and can help determine whether to appeal and how to formulate an appeal. Applicants should have access to this information, subject to reasonable exceptions for public safety or for instances when disclosure would undermine the integrity of an assessment tool (such as by releasing the exam key). Access to one's file is provided for in the *Health Professions Procedural Code*, with some exceptions (such as when access would jeopardize a person's safety).

Recommendation 9
ACCESS TO DOCUMENTS ON FILE

The Fair Registration Practices Code should require regulators to provide applicants with all documents held by the regulator that pertain to their applications, on request, with exceptions for security reasons or for instances when disclosure would undermine the integrity of an assessment process.

In implementing this portion of the Code, regulators should design and implement policy and procedures for responding to requests by applicants for access to their files.

Training for Effective Decision-Making

Registrars, committees, and other decision-makers have major responsibilities in the registration process. Their task is more difficult than the simple application of measurable criteria to each file. It is important but not sufficient for the regulatory body to ensure that persons performing this role are able to exercise good professional judgment. Other skills are important – for example, the skill of evaluation itself.

Evaluation can pose additional challenges when internationally educated applicants come from a diverse range of countries and have a broad range of education and experience. As well, decision-makers need to be able to understand the context of decision-making, which includes recognizing and taking into account cultural differences. Time and resources are required to help those who take on this role to improve their decision-making skills.

A number of training measures can build the capacity for effective decision-making.

- An opportunity to learn about and practise the skill of evaluation, particularly when applied to international experience and qualifications. Ideally this training should be done using adult education techniques that enable the individual to learn about the skill, practise it, and receive feedback.
- The opportunity to learn generic decision-making skills, such as producing sufficient reasons for one's decision, assessing credibility, and applying competency-based measures to an individual applicant.
- Training in cultural competence, understanding diversity, and recognizing the impact of one's experience and background.

Councils and committees of professional regulatory bodies often include persons appointed by government. There is a special obligation here for government to ensure that these persons not only are qualified for appointment but also understand their role and have been prepared to perform it. Training and orientation measures are particularly relevant to these appointees. Training can help them to understand the principle of self-regulation and the public interest at stake in the registration process, as well as the government's commitment to ensuring access to professions by qualified internationally educated persons.

Recommendation 10
TRAINING FOR DECISION-MAKERS

The Fair Registration Practices Code should require regulators to develop and implement training plans for council members and staff who evaluate qualifications and make registration decisions.

In implementing this portion of the Code, regulators should develop the content of training plans and implement the training.

With government support and collaboration, generic training materials should be developed to help minimize costs.

6.3.3 Assessments by Third Parties

Ensuring procedural protections in third party assessors is important because many crucial assessments (such as of credentials and language proficiency) can be – and often are – placed in the hands of third parties.

The basic principle is that the ultimate responsibility for registration decisions rests with the regulatory body. Whether a third party assessment occurs before or after application, the regulatory body should be accountable if it relies on the assessment. It should not be possible to eliminate procedural protections simply by moving a decision to a third party.

If a regulatory body relies on a third party assessment, the assessment result becomes a decision of the regulator. Therefore, an error in the assessment could, at least in theory, be challenged in an appeal of the regulator's decision. A more realistic and practical approach, however, would be for regulatory bodies who rely on third party assessments to assure themselves that basic procedural protections are in place, as applicable, within that third party:

The basic principle is that the ultimate responsibility for registration decisions rests with the regulatory body. Whether a third party assessment occurs before or after application, the regulatory body should be accountable if it relies on the assessment. It should not be possible to eliminate procedural protections simply by moving a decision to a third party.

- published criteria for decision-making
- written decisions
- reasons indicating the basis for unsuccessful assessments
- right of internal review or appeal
- the opportunity for a candidate to retake tests or exams

This is not an unreasonable expectation, and many third parties now relied upon by Ontario regulatory bodies meet it. For example, academic credential assessment providers that are members of the Alliance of Credential Evaluation Services of Canada are expected to have an appeal process. Such services are required to inform the applicant, upon request, of the basis for the decision reached, the possibilities for appealing the decision, and the time limits for appealing. Therefore, regulatory bodies that engage alliance members know that candidates will have access to appeals of credential assessments.[45] In addition, some regulators (such as the College of Physiotherapists of Ontario) already work closely with national bodies on how assessment services are delivered.

Recommendation 11
ASSESSMENTS BY THIRD PARTIES

The Fair Registration Practices Code should require that regulatory bodies that rely on third party assessments of professional competence, equivalence of academic credentials from other jurisdictions, or language proficiency assure themselves that the third parties provide procedural protections including, as applicable:

- published criteria for decision-making
- written decisions
- reasons indicating the basis for unsuccessful assessments
- right of internal review or appeal
- provision to retake tests or exams

In implementing this portion of the Code, regulators should make their expectations clear and reach agreements with third party assessment bodies.

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[45] Provincial Assessment Committee – Canada, *General Guiding Principles for Good Practice in the Assessment of Foreign Credentials* (Alliance of Credential Evaluation Services of Canada, April 1998), section 36, "Appeal"; online at http://www.canalliance.org/.

6.3.4 Internal Appeal or Review

Individuals should have an opportunity for key registration decisions to be reviewed or appealed internally to persons within the regulatory body who were not involved in the initial decision. For example, applicants may wish to challenge an exam result, credential assessment, or language proficiency rating. Ideally any errors will be identified and corrected as early as possible in the process. Internal appeals enhance confidence in the system and can save the time and expense of seeking recourse to an independent appeal.

Internal appeals enhance confidence in the system and can save the time and expense of seeking recourse to an independent appeal.

As noted earlier, most regulatory bodies offer internal reviews or appeals.[46] Arm's-length internal appeals are an element of the Ontario Regulators for Access guidelines. Features of the internal review process in the regulated health professions are set out in the *Health Professions Procedural Code* in the *Regulated Health Professions Act*:

- arm's-length decision-makers who played no role in reaching the initial proposed decision
- notice of why the initial negative decision or proposal by the registrar was made
- reasons in writing for a final decision of the registration committee

When exam results are appealed, re-marking should be done by a different marker unless the marking is computerized. On request, applicants should receive a written critique indicating where their weaknesses are. There should, however, be some limitation on the number of opportunities to retake an exam, because the validity of the assessment can be affected by previous exposure to the exam, especially with multiple-choice formats.

Typically in existing internal appeals or reviews, the applicant has the right to make written submissions. This practice should continue; however, the opportunity to present one's case in person to those making the decision is powerfully linked to the perception of fairness. It can also be an important method of identifying potential errors in decision-making and reducing the demand for further appeals to an external body.

Typically in existing internal appeals or reviews, the applicant has the right to make written submissions. This practice should continue; however, the opportunity to present one's case in person to those making the decision is powerfully linked to the perception of fairness. It can also be an important method of identifying potential errors in decision-making and reducing the demand for further appeals to an external body.

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[46] When matters are referred to the registration committee because the registrar proposes to deny registration or to impose conditions, this is not an "appeal" because, technically, no decision is being appealed. However, it is akin to an appeal and referred to in this report as a "review."

The practice across Ontario's regulatory bodies in offering a right to be heard on registration decisions is mixed. Some offer a chance to meet with the initial decision-maker; others offer hearings at which candidates can make presentations themselves or have someone speak on their behalf. Hearings may be informal or quite formal and comprehensive. On the other hand, in many professions, there is no opportunity for applicants to be heard by the decision-makers at any stage of the internal decision-making process, other than the opportunity to meet with staff to obtain information and advice about the application and its status. In those professions, internal reviews are conducted as paper reviews and not hearings.

Providing full oral hearings during internal appeal or review could be a time-consuming, costly process, particularly in professions with a high volume of applications. When the applicant is not represented, a formal hearing can increase rather than diminish frustration with the process and the result. Some administrative bodies have been innovative in using technology and other creative methods to make their hearings truly accessible, including teleconferencing and video conferencing. The overall objective is to make such hearings accessible and to take away the understandable fear of certain regulatory bodies that offering a chance to be heard would consume overwhelming amounts of time and money.

Regulatory bodies that choose or are required to conduct full oral hearings should provide training for those who preside over the hearings. Ideally this will consist of skills-based seminars on how to conduct fair and efficient hearings.

When full hearings are not feasible, applicants should be given the opportunity to meet, on request, with at least one person involved in decision-making at the internal review or appeal stage.

The meetings could be relatively informal; the minimum requirement is that applicants be able to discuss their case with someone who will ultimately participate in determining the outcome of the application. The Appeals Review does not recommend, however, that regulatory bodies that currently offer hearings switch to the alternative.

When full hearings are not feasible, applicants should be given the opportunity to meet, on request, with at least one person involved in decision-making at the internal review or appeal stage.

Recommendation 12
INTERNAL APPEAL OR REVIEW

The Fair Registration Practices Code should require that regulators:

- provide the opportunity for internal appeal or review of decisions or proposals to refuse registration or impose conditions;
- inform applicants of initial decisions or proposals to deny registration or impose conditions along with sufficient reasons for the decisions or proposals; and
- ensure that reviews are conducted by persons who were not involved in the initial decisions or proposals.

The Fair Registration Practices Code should also require that internal appeals or reviews provide the opportunity for an applicant to:

- make written submissions; and
- attend a hearing before the decision-makers or meet with at least one decision-maker before the registration decision is made.

The Fair Registration Practices Code should further require that the annual reports of professional regulatory bodies include non-identifying statistics on internal registration reviews or appeals as well as the outcomes of matters referred back to the regulator by the independent appeals tribunal.

In implementing this portion of the Code, regulators should:

- design and implement an internal appeal or review process where it does not exist, and consider refinements where it does;
- where oral hearings are provided, ensure that training for decision-makers includes help on how to hold efficient, effective hearings; and
- where meetings with a decision-maker are offered, develop policies and training to enable decision-makers to conduct such meetings effectively.

6.3.5 Registration Decisions and Reasons

Regulatory bodies normally issue formal, written decisions when denying registration. In some cases, however, applicants can be left in limbo without any decision; applicants are simply advised that their applications are "not yet complete." The intention may be to provide an applicant with time to fill a gap or to acquire added experience before a decision is made. But without a formal, written decision within a reasonable time, the applicant has no decision to appeal and the availability of an independent appeal would be meaningless.

Although many regulatory bodies provide reasons for their registration decisions, there is no standard for sufficiency of those reasons.[47] Without sufficiently articulated reasons, the applicant and the appeal body will have difficulty assessing the merits of an independent appeal. Therefore, reasons for decisions to deny or impose conditions on registration should be required of all professions. Reasons should be sufficiently detailed to enable the applicant to understand the basis for a registration decision.

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A clear decision, with reasons, in plain language and linked to the published criteria will help applicants to understand the basis for the refusal and to assess whether an independent appeal is necessary.

Regulators should advise applicants of the timeline for launching an appeal along with a negative registration decision.

Developing reasons for decisions can be a difficult task for the regulatory body. Even the courts are struggling with what constitutes sufficient reasons for a decision. It can be a particular challenge to ensure that the decision and reasons are written in plain language, especially when the criteria are not easily described or when the statutes or regulations to be applied are complex. However, some regulatory bodies have made great strides in this area, avoiding legal boilerplate and paraphrasing and simplifying where possible. A clear decision, with reasons, in plain language and linked to the published criteria will help applicants to understand the basis for the refusal and to assess whether an independent appeal is necessary.

Another important consideration for applicants is any time limit on appealing decisions. Regulators should advise applicants of the timeline for launching an appeal along with a negative registration decision.[48]

Recommendation 13
REGISTRATION DECISIONS AND REASONS

The Fair Registration Practices Code should require that:

- registration decisions be in writing; and
- when the regulator refuses registration or imposes conditions, the decision contain sufficient reasons for the applicant to know the basis for the decision and specifies the deadline for filing a notice of appeal to the independent appeals body.

In implementing this portion of the Code, regulators should provide skills-based training on how to write clear decisions and reasons.

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[47] *The Health Professions Procedural Code* requires the registration committee panel to issue reasons in writing if it refuses registration or issues a certificate with limitations. However, it does not speak to the sufficiency of reasons.

[48] *The Health Professions Procedural Code* requires that the registration committee of the regulator notify applicants of their right of appeal to HPARB as well as time limits on that right.

6.3.6 Reviews of Registration Practices

As noted earlier, regulators should review their registration practices every three years. In some cases, government support may be needed to help identify persons or entities that might assist in conducting such reviews efficiently. The findings and recommendations of each review should be provided to the relevant government ministry and be publicly available, along with any changes the regulatory body proposes to make as a result.

Recommendation 14
REVIEWS OF REGISTRATION PRACTICES

The Fair Registration Practices Code should require that regulators:

- conduct a review of their registration practices every three years, to evaluate the effectiveness of the prescribed practices and to identify areas for further improvements; and
- file reports on reviews of registration practices, along with reports on measures taken to improve the registration process, with the responsible ministry; these reports should be publicly available.

In implementing this portion of the Code, regulators should determine how to conduct effective reviews within the context of their profession.

With government support and collaboration, guidelines should be developed for reviews of registration practices and for building the capacity to conduct them.

6.4 Fair Registration Practices Code: Summary of Recommended Features

Elements of Fair Registration Practices Code	Activities for Regulators	Government Support and Collaboration
INFORMATION AND SUPPORT FOR APPLICANTS		
• Information about registration and appeal processes	• Evaluate existing measures and consider new information vehicles	• Test different ways to support applicants
• Criteria for deciding when entry-to-practice requirements have been met • Examples of situations where exemptible requirements could be exempted	• Ensure criteria are understandable and measurable • Develop examples of where exemptions could be provided or seek change to exemptible requirements that are not exempted	• Create training or how-to guides
REGISTRATION PROCESS		
• Reasonable application and registration costs	• Review fees for reasonableness	
• Timelines for completing the registration process	• Set and publish timelines and develop related policies	
• Alternative methods of assessment where documents are unobtainable	• Design and implement alternative processes where they do not currently exist	
• Access to documents held by regulator, subject to limited exceptions	• Implement procedures for responding to requests by applicants for access to their files	
• Training for those who make registration decisions	• Develop the content of training plans and implement training	• Develop generic training materials to minimize costs • Provide training to government appointees

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REGISTRATION PROCESS		
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• Timelines for completing the registration process	• Set and publish timelines and develop related policies	
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• Access to documents held by regulator, subject to limited exceptions	• Implement procedures for responding to requests by applicants for access to their files	
• Training for those who make registration decisions	• Develop the content of training plans and implement training	• Develop generic training materials to minimize costs • Provide training to government appointees

Elements of Fair Registration Practices Code	Activities for Regulators	Government Support and Collaboration
THIRD PARTY ASSESSMENTS		
• When relying on third party assessments, ensure that they have procedural protections	• Make their expectations clear and reach agreement with third party assessment bodies	
INTERNAL REVIEWS OR APPEALS		
• Option for internal appeal or review by persons who were not originally involved • Information for applicants on the basis for original decision or proposal • Opportunity to make written submissions • Opportunity to attend a hearing or meet with one decision-maker • Data on appeals in annual report	• Design or refine internal process • Ensure training for hearings or meetings	• Develop generic training materials to minimize costs
REGISTRATION DECISIONS AND REASONS		
• Registration decisions in writing with reasons showing the basis for decision • Decisions noting the deadline for appealing to the independent body	• Implement skills-based training on how to write clear decisions and reasons	
REGISTRATION REVIEWS AND REPORTS		
• Reviews by regulators of their registration practices to identify areas for improvement • Reports filed with the responsible ministry and publicly available	• Determine how to conduct effective reviews within the context of their profession	• Develop guidelines for reviews and building the capacity to conduct them

Elements of Fair Registration Practices Code	Activities for Regulators	Government Support and Collaboration
THIRD PARTY ASSESSMENTS		
• When relying on third party assessments, ensure that they have procedural protections	• Make their expectations clear and reach agreement with third party assessment bodies	
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CHAPTER 7
BRIDGING PROGRAMS

The Appeals Review strongly supports the development and expansion of funded bridging programs for internationally educated professionals. We compliment government, stakeholders, and regulatory bodies who have developed creative, accessible models. The Appeals Review did not look at these programs in any depth, as they fall outside our mandate. However, all indications are that existing bridging programs are helpful to those internationally educated professionals who are able to access them.

Certain bridging programs are the primary or virtually the only route for entry to a profession by internationally educated persons. We felt obliged to consider whether some of the safeguards identified elsewhere in this report should also be expected of such programs. The most visible and best-funded bridging program is International Medical Graduates – Ontario (IMGO), which has been introduced to help international medical graduates (IMGs) enter the medical profession.

7.1 International Medical Graduates – Ontario

IMGO provides access to assessment and postgraduate training for international medical graduates. It also provides information to help IMGs navigate the registration process. The Appeals Review focused on the IMGO program as an example of a "primary route of access" program since it was the one most often mentioned by participants in the consultation and it attracts substantial government financial support.[49]

7.1.1 IMGO Process

Candidates for the IMGO program begin by taking a written exam. Approximately 1,000 applicants wrote the most recent one. Those who pass – about 550 succeeded in 2005 – then take a clinical exam. Reassessment of the clinical exam results is not available. A dossier assessment follows. The dossier includes scores from the written and clinical exams, medical school marks, and letters of reference. Some individuals are eliminated at this stage, and interviews are held with the remaining candidates.

The selection of individuals to fill the approximately 200 spaces available is made by the postgraduate program directors of the relevant specialties from Ontario's five medical schools.[50] Placement in these government-funded spaces is based on the assessed level: clerkship, residency, or supervised practice.

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[49] Other "primary route of access" programs appear to include the two-year qualifying program for dental surgeons, the International Midwifery Pre-registration Program, and the International Pharmacy Graduates Program. However, these programs were not examined in detail during the Appeals Review.

7.1.2 Distinct Features of IMGO

IMGO is different from typical bridging programs in its magnitude and government funding commitment, and because it is the primary vehicle by which international medical graduates can achieve licensure as physicians in Ontario.[51] Because health care delivery and funding for the training of physicians is publicly funded, and because of national coordination of postgraduate training and limited capacity in clinical settings, there is a limit on the number of positions for training and assessment, and the IMGO program is the only entry point to the positions designated for international candidates.

Therefore, successful passage through the IMGO program is vitally important for international medical graduates. Candidates with low exam scores will understand why they do not proceed to the next stage, but it may not always be clear how the results of written exams, clinical exams, dossier reviews, and interviews combine to determine access to the clinical positions. Nor is it always readily apparent what criteria were applied to clinical exam, dossier review, or interview.

7.1.3 Recent Improvements to the Program

The IMGO program is still in the early stages of implementation. The program has recently made a number of improvements, including an increase to 200 positions. Other improvements are being implemented in 2005.

- As of 2005, IMGO is providing applicants with a mean score and their own scores for the written exam. This enables applicants to know how they did on the exam compared with others in the overall exam and in particular disciplines.
- There is no longer a limit on how many times candidates may rewrite the exam. In the past they were limited to three rewrites.
- In 2005, for the first time, some candidates who scored below the mean were still invited to take the clinical exam, improving their opportunities to succeed.[52] The value of this change will be assessed before determining whether to make the practice permanent.
- Candidates are now able to carry their written exam scores forward from year to year.

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[50] These 200 positions equal approximately one fifth of the number of residency positions available to Canadian medical graduates.

[51] The International Pharmacy Graduates Program is comparable in some ways, in that the program is seen as the primary route for internationally educated pharmacists to gain entry to this profession.

[52] Funding is an issue. IMGO says that if funding were available, all candidates could take both the written and clinical exams.

- Candidates may now also obtain a re-score of their written exam results for a $50 fee.
- IMGO plans to provide, in 2005, more information on clinical exam scores to candidates, so that they will know where they rank in relation to other candidates. There is a concern, however, that providing too much detail would detract from the effectiveness of the clinical exam as a testing tool when candidates take the exam more than once.

7.1.4 Concerns Raised in Consultation

Concerns about the IMGO process were raised during the research and consultation phase of the Appeals Review, mostly in relation to the clinical assessment stage and the resulting placement decisions for access to residency positions. Some consultation participants stated that scoring and feedback from the clinical exam is not detailed enough to permit candidates to identify weaknesses. Some further suggested that the criteria for assessing clinical skills, the dossier, and the personal interview are insufficient. Candidates do not receive – and are not encouraged to request – feedback on the dossier review and interview to enable them to identify weaknesses. Nor are there appeals of assessments or placement decisions. Some persons consulted advocated for an appeal from the clinical exam.

7.1.5 Proposed Changes

It is not practical to offer appeals from the clinical decision-making that is an important part of the IMGO process.

It is not practical to offer appeals from the clinical decision-making that is an important part of the IMGO process. Such appeals are not now offered to Ontario (or Canadian) graduates. They would not be easy to implement, given the demands they would place on clinical directors and others who are already giving large amounts of time to this process. Appeals would also be problematic because they could involve essentially the consideration of whether one candidate should displace another, since the number of positions is limited. This would also introduce delay at an inopportune point in the selection process.

To their credit, those in charge of the IMGO program are making concerted efforts to identify and implement possible improvements in the program, as noted above. After discussion with persons involved in the IMGO program and consideration of approaches taken in other jurisdictions, we propose the following improvements.

- Additional development and publication of criteria for decision-making at all stages: written and clinical exams, dossier review, and interview.
- Access by applicants to more complete feedback, including identification of areas of weakness and gaps to be filled.[53]
- Additional training for those involved in clinical decision-making on the skill of criteria-based evaluation and on issues relating to diversity and social context.
- Support to applicants in navigating the system and assessing their options, to be provided by program partners or by other organizations.[54]

Additional quality assurance mechanisms should also be introduced for the clinical assessment stage. For example, videotaping of clinical assessments for applicants seeking entry to medical practice is a quality assurance mechanism employed in the United States by the Federation of State Medical Boards and the National Board of Medical Examiners. The tapes are used to give feedback to the clinicians and to assist those who design training programs for conducting clinical assessments. They cannot be used for appeals, but if a written complaint is received suggesting that a significant problem arose during the clinical assessment, they act as an internal means of verification.

Recommendation 15
"PRIMARY ACCESS" BRIDGING PROGRAMS

Bridging programs that constitute the primary route of access to a regulated profession for internationally educated applicants should provide the following procedural protections, where relevant to their processes:

- publication of criteria for decision-making
- constructive feedback to unsuccessful applicants on request
- training of those making clinical assessments
- support to applicants in navigating the system and assessing their options, to be provided by program partners or other organizations
- quality assurance mechanisms for clinical or situational assessments, such as the use of videotaping

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[53] We believe that feedback can be provided in a way that does not compromise the integrity of the clinical examination process.

[54] IMGO is careful to avoid steering unsuccessful applicants to specific upgrading programs or giving alternative career advice. Additional support to community organizations like the Association of International Physicians and Surgeons of Ontario could be an appropriate way to ensure that candidates receive the support they need.

CHAPTER 8
CURRENT INDEPENDENT APPEAL MECHANISMS

Chapter 3 describes the two existing independent appeal tribunals, the Health Professions Appeal and Review Board (HPARB) and the Licence Appeal Tribunal (LAT), that hear appeals of registration and other decisions. This chapter provides some observations about the effectiveness of their work, based on consultation and research. Greater emphasis is placed on HPARB, because LAT plays a much more limited role in professional registration appeals.

This chapter also comments on access to the courts for review or appeal of registration decisions.

8.1 The Health Professions Appeal and Review Board and the Licence Appeal Tribunal

HPARB can act as a "quality assurance instrument" that helps registration committees to improve existing policies and procedures.

In general, regulators whose registration decisions can be appealed to HPARB or LAT speak positively about the work done by both of them. For example, some health regulators expressed concern about the prospect of losing HPARB in favour of a more generic model. Some health regulators also noted that HPARB provides a valuable review function for registration procedures. HPARB can act as a "quality assurance instrument" that helps registration committees to improve existing policies and procedures. For example, one regulatory body reported that it revised its process for credential assessment on the basis of commentary in an HPARB decision.

Although LAT has experience in a variety of licensing areas, it deals with professional registration appeals in only two professions included in this review, funeral services and real estate and business brokerage. Some participants we consulted expressed concern about whether LAT is an appropriate body to take on a broader role in appeals of professional registration decisions.

8.2 Tribunal Procedures

8.2.1 Launching the Appeal

Stakeholders see HPARB and LAT as relatively accessible, in that it is not complicated for a party to commence the independent appeal process of either tribunal.

Some health regulators suggested that persons launching an appeal to HPARB should be required to state grounds for appeal in the notice of appeal.

8.2.2 Disclosure

Both HPARB and LAT require prior disclosure of evidence. LAT requires both applicant and regulatory body to disclose. The *Health Professions Procedural Code* requires disclosure by the regulator. In the consultation, mandatory disclosure by both parties was seen as an essential requirement that helps to ensure fairness and expedite the appeal process.

8.2.3 Pre-Hearing Processes

The availability of pre-hearing processes at LAT was seen as a benefit for those who had taken advantage of them. Pre-hearing processes were said to enable the parties to focus on the issues in the appeal and to facilitate settlement where possible at an early stage in the appeal process.

Of all cases filed with LAT, 40% are settled through the pre-hearing mediation process. (Another 15% are withdrawn or otherwise do not come to hearing.) This considerably reduces the workload of the tribunal. Most of the matters handled by LAT are not, of course, professional licensing matters.

Although HPARB's Rules of Practice (2005) contain provisions regarding pre-hearing conferences for registration hearings, we have been advised that HPARB rarely takes advantage of pre-hearing processes.

8.2.4 Hearings

Both HPARB and LAT have rules that allow for oral, written, or electronic hearings. Of 42 registration matters before HPARB in 2004, 15 were heard orally and 27 by way of written review. A handful of the oral hearings were conducted over the phone or electronically.

Written hearings are expeditious for the tribunal and offer flexibility to the parties. Generally they are less expensive. However, when an applicant is self-represented, unfamiliar with legal process, and not easily able to develop written submissions, a paper review is not an attractive option. The *Health Professions Procedural Code* provides appellants the choice of written or oral proceedings.

Telephone or electronic hearings provide flexibility, save time and resources, and may, on occasion, provide the only practical way of conducting a hearing. HPARB holds hearings by conference call with applicants who are outside Canada.

8.2.5 Appeal Decisions

During the consultation, some said that HPARB should refer more matters back to the relevant regulatory body, while others felt HPARB was too deferential to regulatory bodies. Some regulatory bodies expressed a concern that HPARB adjudicators sometimes use individual cases as a vehicle to criticize registration policies and practices.

8.2.6 Support to Applicants

Although regulatory bodies reported that they provide information about the HPARB appeal process to applicants early in the registration process, the information tends to be in legalistic language and hard to understand, especially for internationally educated applicants. Clear information is lacking about what is appealable and what remedies are available. Some applicants may bring forward appeals without any realistic chance of success because they do not understand the process or the issues that can be appealed; for instance, they may try to appeal for relief from a non-exemptible requirement.

The HPARB legislation does not require applicants to state why they are appealing. When the basis for the appeal is not clear, the regulator may have difficulty responding to the appeal and applicants may find out much later, to their frustration, that the basis for their appeals is not one for which they are likely or even able to obtain relief.

Both advocates and regulators said that registration appeals would benefit from giving applicants some independent support to enable them to fully participate in the appeal, even though support to the applicant at the appeal stage was generally not seen to be as important as support at earlier stages in the registration process.

A formal legal process and its accompanying documentation can be especially intimidating for applicants who are not familiar with the Canadian legal environment and who are not represented by legal counsel. However, the *Health Professions Procedural Code* process does not provide for access to independent support, guidance, or assistance in case preparation. Both advocates and regulators said that registration appeals would benefit from giving applicants some independent support to enable them to fully participate in the appeal, even though support to the applicant at the appeal stage was generally not seen to be as important as support at earlier stages in the registration process.

8.2.7 Timeliness

Average times for HPARB to complete appeals appear to be reasonable, but some cases, particularly those that go to a hearing as opposed to a paper review, were reported to take too long. HPARB has made improvements in the past few years to reduce backlog; nonetheless, regulators have observed delay and backlog as a problem with the HPARB process. This appears to be more of an issue in complaint appeals than in registration appeals.

8.3 Appointment, Expertise, and Training of Adjudicators

Various representations were made about appointments to HPARB and LAT: concern about previous governments' non-transparent appointment processes, uncertainty about terms and renewals, and perceptions of insufficient independence from government and of a lack of clarity about the role of the Chair in the appointments and reappointments process.

The fact that professionals from the regulated health professions do not serve as adjudicators at HPARB was generally viewed as a positive feature, preserving independence and ensuring that the board focuses on alleged errors as opposed to the merits of the regulatory body's decision.

Adjudicators in both tribunals receive low per diem payments for the level of expertise and responsibility required. While the level of commitment of those now serving on these bodies is high, this low per diem has an inevitable impact on the number and calibre of those willing to serve on such tribunals.

Both HPARB and LAT conduct in-house training and mentoring. They are restricted in the adjudication training they can provide, however, by limited budgets. When funding is available, the tribunals send new adjudicators to the generic adjudicator training course provided by the Society of Ontario Adjudicators and Regulators (SOAR). Some adjudicators also take SOAR's decision-writing skills workshop or attend adjudicators' conferences.

8.4 Appeal or Review by the Courts

The first and only means of appealing registration decisions for several professions is for the applicant to go to the Divisional Court. There is also a second level of statutory appeal to the courts from both HPARB and LAT. These routes are not often used. Appeals to court are seen as formal, lengthy, and expensive. The courts also hear judicial review applications when appeals are not available. There have not been many court appeals or judicial reviews of registration decisions. We were told by regulators, however, that when appeals to the court are taken, they perform an important role in correcting errors and dealing with major legal and procedural issues.

CHAPTER 9
ELEMENTS OF AN EFFECTIVE INDEPENDENT APPEAL MECHANISM

Reform of administrative tribunals has been the subject of much activity over the past two decades in Canada and in other jurisdictions. Much of that activity has focused on the best practices to make tribunals accessible, fair, and accountable. An Ontario commission submitted its *Everyday Justice* report in 1998, leading to new practices in tribunals and amendments to the *Statutory Powers Procedure Act.*[55] British Columbia has done an in-depth review of administrative decision-making that led to new legislation governing administrative justice.

More recently, the Administrative Justice Working Group (AJWG) has submitted to the Ontario government its "Recommendations to Improve the Appointments Process for Ontario Non-Regulatory Tribunals."[56] The AJWG is a diverse group of legal practitioners who have come together to consider the need for reform of the administrative justice system in Ontario.

The Appeals Review has considered the experience to date in Ontario, the views of those with whom we consulted, the Australian *Best Practice Guide*,[57] and the principles and objectives of our mandate in order to formulate the essential elements of an effective independent appeal process and appeal body in the following areas:

- grounds of appeal and legal remedies
- appeal procedure
- appointment, qualifications, and training of adjudicators
- structure and location of independent appeal body
- reporting and liaison

The model we recommend for independent appeals assumes that the elements of fair registration practices from Chapter 6 – such as written decisions, sufficient reasons, and published criteria for decision-making – are in place within regulatory bodies, to lay the foundation for effective appeals when necessary.

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[55] Agency Reform Commission on Ontario's Regulatory & Adjudicative Agencies, *Everyday Justice: Report*, Gary Guzzo, Chair (Queen's Printer for Ontario, April 1998).

[56] February 2005. George Thomson is a member of the AJWG and generally supports the proposals made in the paper. The paper is unpublished but can be obtained from the co-chairs, Alec Farquhar (alec.farquhar@mol.gov.on.ca) and Kathy Laird (lairdk@lao.on.ca).

[57] See also Appendix D: Other Jurisdictions.

9.1 Grounds of Appeal and Legal Remedies

9.1.1 Grounds of Appeal

Currently, appeals of registration decisions to the Health Professions Appeal and Review Board do not have to be brought on specific grounds, nor are applicants required to specify the reasons for their appeal. Clarity about the types of decisions that can be appealed and the grounds for appeal, along with a requirement to specify the reasons for appeals, would improve the effectiveness of the system. For example, specifying reasons could help to focus and shorten appeals in many cases.

Denial of the registration application, whether for the right to use a title or for the right to practise, or the granting or denial of provisional, limited, or conditional registration should be appealable. A decision to impose conditions, a failure to decide within a reasonable time, or a refusal to accept or process an application should be appealable as well.

The grounds of appeal should be based on errors of fact, errors of law, or errors of mixed fact and law. These grounds would include procedural errors or reasonable apprehension of bias. An example of a procedural error is the failure of the regulatory body to follow its own procedures or timelines. Examples of errors of fact or law include taking into account irrelevant considerations in the assessment process or failing to consider whether to exempt an applicant from an exemptible requirement.

Recommendation 16
APPEALABLE DECISIONS

Applicants for professional registration should be able to appeal the following decisions to the independent appeal body:

- decisions to deny registration
- decisions to grant or deny provisional, limited, or conditional registration
- lack of registration decisions within a reasonable time
- refusals to accept or process applications

Recommendation 17
GROUNDS OF APPEAL

Applicants should be able to appeal registration decisions through evidence that establishes that the regulatory body made an error of law, an error of fact, or an error of mixed fact and law. These grounds of appeal would include procedural error that resulted in prejudice to the applicant, and reasonable apprehension of bias.

Recommendation 18
NOTICE OF APPEAL

The notice of appeal should specify the reasons for the appeal so that all parties and the tribunal understand the nature and scope of the appeal.

9.1.2 Remedies on Appeal to Tribunal

In registration matters Canadian courts have consistently held that administrative appeal tribunals and courts should defer to regulatory bodies, particularly if professional expertise is required to make the decisions they are reviewing on appeal. The rationale is that the regulatory body has professional expertise that the appeal body or court does not possess.

We believe, as do the courts, that this deferential approach should be reflected in the appeal body's choice of remedies when an error has been identified. As is generally the case now with HPARB, when professional expertise appears to be needed, the matter should be referred back to the regulatory body, which will then decide again after correcting the identified error.[58]

For example, when the regulatory body fails to consider evidence that could support exemption of an exemptible requirement, it could be asked to do so and to decide again. The appeal body may require the regulator to cure a procedural or legal error and then make a fresh decision. It could be asked to decide again, free of irrelevant considerations or taking into account criteria or factors that were not adequately considered the first time around. In this paradigm, the regulatory body is being told not how to exercise its professional judgment but rather to exercise it free of an identified error.

However, not all questions before the appeal tribunal will require professional expertise. While the line is not always easy to draw, situations can arise where the remedy should be to order registration of the applicant. For example, the regulatory body's initial denial may be based only upon an apparent gap in the applicant's qualifications, but the finding of that gap could be incorrect or based upon evidence that is not relevant to the decision. Even with the changes proposed in this report, the appeal stage will be the first full hearing for many applicants; this may well be the stage at which errors of this kind are identified.

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[58] The Task Force on Access to Professions and Trades in Ontario went further and recommended that an appellate tribunal be granted the power to substitute its decision for that of the regulator. For the reasons stated above, we believe substitution of a decision should be permitted only when professional expertise is not required. P.A. Cumming, Enid L.D. Lee, and Dimitrios G. Oreopoulos, *Access! Task Force on Access to Professions and Trades in Ontario*, prepared for Ontario Ministry of Citizenship (Queen's Printer for Ontario, 1989).

While such cases may be few and care should be taken to respect the principle of deference, it equally makes sense to move directly to registration of qualified applicants when no reason for deference exists.[59]

Recommendation 19
REMEDIES ON APPEAL

The remedies available in an independent registration appeal should be based on the following principles:

- When professional expertise is required to determine the matter under appeal, the independent appeal body should either uphold the decision or refer the matter back to the regulatory body with recommendations.
- When the appeal tribunal finds that an error has been made on a matter that does not require professional expertise to determine, and the tribunal finds that the applicant qualifies for registration, it could order registration of the applicant, with or without conditions. Such authority would be exercised most often in situations involving straightforward questions of fact.

9.2 Appeal Process

The Appeals Review recommends the following procedural elements of an independent registration appeal process. Each is discussed in this section.

Recommendation 20
PROCEDURAL ELEMENTS OF INDEPENDENT APPEAL

The following elements should be included in the independent appeal process for professional registration decisions:

- clear information on the appeal process, available to applicants
- support for self-represented applicants

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[59] For recent cases which deal with these issues, see *College of Physicians and Surgeons of Ontario v. Payne* (2002), 219 D.L.R. (4th) 350 (Ont. Div. Ct.); and *Mobayed v. College of Physicians and Surgeons of Ontario* (June 10, 2003), Toronto, court file no. 581/2001 (Ont. Div. Ct.).

- established timelines for completing registration appeals
- option for applicants to choose paper review or in-person hearing
- reasonable fees that do not deter applicants
- reasonable disclosure of evidence by both parties and an opportunity for the regulator to revise its decision on the basis of new evidence prior to the appeal hearing
- pre-hearing processes to clarify or resolve issues, conducted by a separate adjudicator and not mandatory for the applicant
- flexible hearings, focusing on alleged errors, in which the tribunal can receive new evidence but can also allow the regulatory body to revise its decision in light of that evidence
- a single adjudicator, except when the Chair assigns a three-member panel for cases that raise significant, new, or difficult questions
- clear written decisions and reasons

9.2.1 Clear Information for Applicants

For an appeal to be effective there must be clear, understandable, plain-language information about the process, the grounds on which a person might appeal, and the steps that should be taken to initiate and carry forward an appeal. Information about appeals should be available early in the registration process and provided to individual applicants along with the registration decision in their case. The regulatory body should also state clearly that use of the independent appeal process will not jeopardize later contacts with the regulatory body.

For an appeal to be effective there must be clear, understandable, plain-language information about the process, the grounds on which a person might appeal, and the steps that should be taken to initiate and carry forward an appeal.

9.2.2 Support for Self-Represented Applicants

Earlier this report recommended providing assistance to applicants to navigate the maze of requirements and processes for registration or licensure. Help is also needed in appeals, where self-represented applicants need some support to work their way through what can be a daunting appeal process. Providing information and advice to applicants without lawyers would assist not only them but also the tribunal and regulatory bodies. Applicants who have a realistic appreciation of their cases and how they might best present their appeals are much more likely to be satisfied with the

Self-represented applicants need some support to work their way through what can be a daunting appeal process.

outcome, win or lose. Further, it is in the interests of all parties for applicants to understand when an appeal is worth pursuing, to be able to focus on the issues, to be able to pursue early resolution, and to have the capacity to articulate their cases well.

It is not reasonable to expect applicants to be given dedicated legal representation. However, access to a community legal clinic could be beneficial, when a major issue affecting all applicants is at stake and the applicant lacks resources, or when an under-resourced applicant has a particular need for assistance. Alternatively, the tribunal might fund one or more independent lawyers or paralegals to provide assistance to self-represented applicants.

The challenge is how to assist applicants in an effective but cost-efficient manner. Tribunal staff can play a role. It is expected that the new tribunal would employ counsel. The primary job of tribunal counsel is to support decision-makers, but their work can also incidentally assist applicants, particularly self-represented ones, by clarifying issues before the hearing and ensuring that appropriate questions are asked at the hearing. Good training of tribunal members on the role they can and should play in assisting self-represented applicants would help as well.

9.2.3 Established Timelines

Effective independent appeals require established timelines and a body with enough resources to meet them. For some stages in the process, there should be fixed timelines: for instance, for filing an appeal or for first appearance at a hearing. For others, the tribunal should work to goals set by the Chair, such as for the completion and release of appeal decisions.

9.2.4 Options for Paper Review or Hearing

Applicants should have the right to choose whether their appeal should be conducted through a paper review or through an in-person hearing, a choice that is currently offered in HPARB appeals. Technology should be available to make hearings accessible by telephone or video conference.

9.2.5 Reasonable Fees

Reasonable fees are an access-to-justice issue. The fee for filing an appeal should be established at a level that does not deter appeals. On the other hand, some regulators cautioned that having no fee or a very low fee could encourage frivolous or vexatious appeals.

9.2.6 Reasonable Disclosure of Evidence

Disclosure of evidence by all parties prior to hearings is another practice that enhances fairness and saves resources, allowing parties to understand the evidence in advance and properly prepare for and participate in the hearing. On the other hand, disclosure requirements can be burdensome for self-represented appellants, especially those unfamiliar with Canadian practice. The requirement to disclose evidence should be applied flexibly, therefore, when appellants are self-represented. When an applicant discloses new evidence, the regulatory body should have an opportunity to revise its decision at any time before the appeal hearing.

9.2.7 Pre-Hearing Processes

A pre-hearing process should be available as part of an appeal, although participation in it should be voluntary. The pre-hearing process should be conducted by an adjudicator other than the one who holds the hearing.

Any new appeal body should have a pre-hearing process to identify cases with little chance of success on appeal and to settle appropriate cases without the frustration and expense of a full hearing.

Any new appeal body should have a pre-hearing process to identify cases with little chance of success on appeal and to settle appropriate cases without the frustration and expense of a full hearing. The pre-hearing process can also secure agreement about how the hearing itself will be conducted, thus potentially shortening it. Sometimes mediated settlements may also be achieved through a pre-hearing process.

Pre-hearing processes are required to achieve these benefits. All reports on administrative law agree on their value, and the *Statutory Powers Procedure Act* was amended to include pre-hearing processes.

It must be recognized, however, that the cases coming before the proposed tribunal would deal with the right (or privilege) to practise a profession where the public interest is clearly at stake. Pre-hearing processes must be sensitive to this reality.

9.2.8 Flexible Hearings

From our review of the HPARB process we came to the conclusion that HPARB is an appeal body that, in practice, focuses on whether an error was made by the regulatory body. HPARB itself asserts that the form of appeal it provides is what is called a de novo hearing, more like a first-level determination than an appeal. In our opinion this can create confusion about what is at issue in the appeal proceeding – i.e., has the regulatory body made an error in its decision.

We believe, however, that the flexible, open approach taken by HPARB to the conduct of its appeal hearings is a good one. This approach recognizes the fact that this hearing is often the applicant's first opportunity to be heard directly. Many are self-represented and have few resources. This approach also helps to reinforce an important objective for the new appeal body proposed in this report, which is to be clear about the fact that this is an appeal, while also maintaining a flexible, accessible approach to the hearing.

The SPPA should continue to apply to registration appeal hearings but excessive formality should be avoided. In addition, it will be important for adjudicators to be well trained on how to conduct a hearing. The appeal body should consider documentation from the initial proceeding, any evidence disclosed or presented, and submissions of the parties. It should be permitted to receive new evidence, but it should consider offering the regulatory body an opportunity to revise its decision in light of the new evidence.

9.2.9 Single Adjudicator or Three-Member Panel

With well-trained and high-calibre adjudicators, it should be sufficient and more efficient for a single adjudicator to hold a hearing and render a decision in most cases. However, in cases that raise significant, new, or difficult questions, the Chair of the tribunal should have the option of assigning a panel of three adjudicators.

In cases that raise significant, new, or difficult questions, the Chair of the tribunal should have the option of assigning a panel of three adjudicators.

9.2.10 Clear Written Decisions with Reasons

Appeal decisions should be provided in writing to the parties and should clearly express why the decision was arrived at. Developing the skill of providing understandable decisions with sufficient reasons requires effort, but it is directly related to the parties' overall satisfaction with the appeal process.

9.2.11 Costs

Costs are the expenses associated with bringing an appeal, including filing fees, preparation expenses, and expert witness fees. The SPPA allows a tribunal to award costs (if it makes a rule to do so) when a party has "been unreasonable, frivolous or vexatious or ... acted in bad faith." Some statutes such as the *Tenant Protection Act* give tribunals wider powers to award costs.

The power to award costs helps tribunals discourage inappropriate behaviour by a party. The question of costs has not been identified as an issue during our consultations. The power to award costs should be reserved for cases of egregious behaviour and used seldom. The SPPA provisions therefore appear to be sufficient.

9.3 Appointment, Qualifications, and Training of Adjudicators

Ultimately the quality of any appeal process is dependent upon the quality of the Chair and adjudicators. We recommend that the independent appeal work be conducted by qualified and well-prepared tribunal members.

Recommendation 21
ADJUDICATORS

The government should recruit qualified adjudicators for an independent appeal tribunal through a transparent, competitive order-in-council appointment process, with a per diem that adequately reflects the level of skill required.

Adjudicators should not preside over appeals involving the profession of which they are a member, with a possible exception for lawyers.

The tribunal should provide its adjudicators with effective training for their role.

9.3.1 Qualifications of Adjudicators

Key skills required for adjudicators are expertise in decision-making and in the conduct of hearings, coupled with the ability to understand complex regulations and procedures and properly frame the issues. Also of importance is a good understanding of the permissible grounds of appeal, the standard of review, and how to recognize error. Like judges in courts, adjudicators need not be subject experts for all matters that come before them, but they do need a number of other skills, such as the ability to hear cases fairly and to render just and reasonable decisions.

Standards for the selection and appointment of appeal body members should be transparent and the role of the Chair should be clearly defined. The current government has taken an important step by advertising for applicants for Chair positions and posting tribunal vacancies online. We recommend a competitive process of selection for Chairs and adjudicators. In addition, terms of appointments and renewals should be of sufficient length so that expertise gained through adjudicator training and experience in conducting hearings will not be too easily lost.

These changes and improvements in the appointment process will be of value not only to the tribunal proposed in this report but also to the whole administrative justice system in Ontario. The AJWG report calls for "an open, transparent, accessible, merit-based and competitive process for the recruitment and appointment of members" to all Ontario tribunals that decide fundamental rights and entitlements."[60]

It is generally acknowledged that the per diems for adjudicators in HPARB and LAT are lower than per diems for other tribunals that adjudicate on rights. Increasing these payments could substantially enlarge the pool of available, qualified adjudicators.

9.3.2 Adjudicators from Other Professions

Adjudicators on a panel should not be from the profession that is the subject of an appeal. Such a restriction avoids the risk that adjudicators will venture beyond correction of procedural or legal errors and substitute their own professional judgment. Further, it would be impractical to require adjudicators from all professions to be available for appeals from their professions. Applicants' perceptions of fairness might be impaired if the adjudicators were members of the professional body that denied their registration.[61]

The proposed appeal body may have professionals from various professions available as adjudicators; however, panels hearing cases should not be from the profession that is under appeal. An exception may be required to allow lawyers or retired judges to hear appeals in the legal profession.

The proposed appeal body may have professionals from various professions available as adjudicators; however, panels hearing cases should not be from the profession that is under appeal. An exception may be required to allow lawyers or retired judges to hear appeals in the legal profession. This exception is recommended in order to benefit from the expertise of lawyers in administrative decision-making.

9.3.3 Adjudicator Training

Adjudication of registration appeals is not a skill that comes automatically upon appointment. However, good appointments coupled with good training will greatly increase the likelihood of good decision-making.

The investment necessary to produce and offer effective training programs to adjudicators would yield significant benefits. Good training would be particularly important for a new appeal tribunal with broader jurisdiction.

Much has been learned in recent years about what constitutes a good curriculum that prepares adjudicators well for their roles. A strong curriculum focuses on three areas: the required knowledge; the skills associated with good adjudication

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[60] Administrative Justice Working Group, "Recommendations to Improve the Appointments Process for Ontario Non-Regulatory Tribunals" (February 2005), page 1. The paper is unpublished but can be obtained from the co-chairs, Alec Farquhar (alec.farquhar@mol.gov.on.ca) and Kathy Laird (lairdk@lao.on.ca).

[61] The Task Force on Access to Professions and Trades in Ontario recommended that there be an appeal to "a specialty tribunal, composed in whole or in part of members of the public, independent of the occupation, appointed to represent the public interest." P.A. Cumming, Enid L.D. Lee, and Dimitrios G. Oreopoulos, *Access! Task Force on Access to Professions and Trades in Ontario*, prepared for Ontario Ministry of Citizenship (Queen's Printer for Ontario, 1989).

A strong curriculum focuses on three areas: the required knowledge; the skills associated with good adjudication (or the craft of adjudication); and an understanding of social context.

(or the craft of adjudication); and an understanding of social context. The education is delivered best when all three elements are integrated and when good adult education principles are adopted.

The curriculum for adjudicators should include some or all of the following areas.

Knowledge

- regulatory framework and statutory interpretation
- grounds of appeal
- standards of review for appellate bodies
- requirements of natural justice and procedural fairness

Skills

- conducting pre-hearing procedures
- preparing for the hearing or paper review
- communications skills
- conducting a fair and effective hearing
- credibility and fact finding
- producing oral and written decisions that are understandable and include sufficient reasons for decision
- ethical conduct inside and outside the hearing room

Social Context Considerations

- understanding principles of equality
- recognizing how one's individual perspectives affect one's decision-making
- understanding cultural diversity

Portions of the training could be provided by the Society of Ontario Adjudicators and Regulators (SOAR), which has a proven record in this field. Some of it might need to be custom designed for the professional regulatory context.

9.4 Structure and Location of Independent Appeal Body

9.4.1 The Need for an Appeal Tribunal

Some have suggested that there is no need for an appeal tribunal: the present volume of registration appeals at HPARB and LAT is low, and appeal decisions can be rendered by the courts. In this view, the emphasis should be on procedures and protections at earlier stages of the registration process that would further reduce the number of appeals. Why take registration appeals to an administrative tribunal rather than to the courts?

Tribunal or Courts?

In large measure, the answer to this question lies in the reasons why we have an administrative justice system. Tribunals are more accessible, less costly for the parties, and generally able to offer a simpler and more efficient process, earlier hearings, and faster decisions. Both HPARB and LAT demonstrate these advantages.

In addition, if adjudicators are well trained and accumulate experience in carrying out their review functions, they acquire a decision-making expertise that is of value, even though they are expected to defer to the professional expertise of those whose decisions they review.

Further, although access to the courts is available in all regulated professions, through either a statutory appeal or judicial review, it is not a practical or affordable remedy for many parties. Therefore, we believe that registration appeals should be conducted by an independent adjudicative agency.[62]

Pre-Appeal Measures and Projected Appeal Workload

While this report places great weight on pre-appeal measures to reduce appeals, it is risky to assume that the overall number of appeals would diminish with the implementation of our recommendations. Many more professions would have appeal mechanisms, including some with a very high volume of applicants. The measures proposed in this report would increase applicants' awareness of the option to appeal and the grounds of appeal; applicants would be better supported when they consider taking advantage of appeal mechanisms; and some of the reforms at the regulator level, such as the introduction of additional, measurable criteria, would make some appeals feasible that were not before.

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[62] According to the Public Appointments Secretariat, adjudicative agencies "make independent quasi-judicial decisions, resolve disputes, etc. on the obligations, rights, responsibilities, etc. of an individual, business or corporate body against existing policies, regulations, and statutes, and/or hear appeals against previous decisions. Some examples include the Ontario Human Rights Commission, the Ontario Labour Relations Board and the Assessment Review Board." "General Information," at http://www.pas.gov.on.ca/scripts/en/generalInfo.asp.

Moreover, the existence of good, well-functioning pre-appeal processes would not make any less important the reasons for having an independent appeal mechanism that are set out earlier in this report.

An independent appeal procedure already exists for registration appeals in some professions. The issue is not whether a right of appeal should be available, but only whether it should be available to applicants for admission to all professions and, if so, how to introduce that right in an effective and efficient manner.

9.4.2 Single or Multiple Tribunals

Another question the Appeals Review considered is whether a single tribunal should conduct appeals for all regulated professions or whether there should be different approaches for the health and non-health professions. Related to that is the question of whether to expand an existing tribunal such as HPARB or LAT or create a new tribunal.

Participants in the consultation raised the following options for independent appeals: one tribunal for all professions; separate tribunals for large professions; and expansion of the Licence Appeal Tribunal for non-health professions. Some regulators expressed concern about a one-size-fits-all appeal process, since regulators are not homogeneous and a single tribunal would be a more complicated body to manage.

Since the volume of registration appeals may not be high, the benefits of consolidated expertise and avoidance of multiple tribunals are a significant factor. We recommend a single tribunal for all registration appeals. Since the tribunal would deal with a diversity of professions, simply expanding HPARB is not a preferred option, because of its dedicated health focus and staffing by public servants from the Ministry of Health and Long-Term Care. Nor does LAT appear to be a candidate, since professional registration appeals are such a small part of its workload and it focuses largely on commercial and consumer issues.

In the interests of cost efficiency, it may be necessary to decide whether complaints appeals, where they exist, should also move to the proposed tribunal; this would mean that the bulk of HPARB's work would be handled by the new tribunal.[63] However, as the Appeals Review was not mandated to look at complaints processes, we make no recommendation on this question.

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[63] HPARB has other specific functions that are related to neither registration nor complaints appeals. If the proposed model is adopted, these functions would need a new home.

9.4.3 Ministry Responsible for the Appeal Tribunal

Some have suggested that an independent appeal tribunal ought not to be associated or aligned with any of the ministries whose professions are being served. Although there are some issues of perception that give weight to this suggestion, it is not one easily adopted, given the range of ministries that now relate to the various professional bodies. On balance, it makes sense to link the tribunal with the Ministry of the Attorney General as the ministry responsible for administrative justice and human rights.

On balance, it makes sense to link the tribunal with the Ministry of the Attorney General as the ministry responsible for administrative justice and human rights.

In addition to having responsibility for the administration of the courts, this ministry has legislative responsibility for the *Statutory Powers Procedure Act* and the *Judicial Review Procedure Act*, which constitute the statutory framework for administrative law. The ministry also has responsibility for human rights. All this makes the Ministry of the Attorney General a good choice, even though it has legislative responsibility for some regulated professions.[64]

Recommendation 22
STRUCTURE AND LOCATION OF APPEAL BODY

A single appeal tribunal should be established as an adjudicative agency reporting to the Ministry of the Attorney General, to conduct independent registration appeals for Ontario's self-regulated professions.

9.5 Reporting and Liaison

9.5.1 Annual Reports

Independent appeals can point to ways to improve registration processes and decision-making. It is reasonable to expect an appeal body to provide policy feedback, but individual cases generally are not the appropriate context. The Appeals Review recommends that the proposed appeal tribunal use its annual report to raise policy issues and provide feedback and suggestions on registration decision-making processes.

For further accountability and to encourage continuing learning from appeals, regulatory bodies should include in their annual reports aggregate information on appeals or reviews of their registration decisions, including action taken in response to any referrals for reconsideration by the proposed appeal tribunal.

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[64] Public accounting, law, professional engineering, and architecture.

9.5.2 Liaison

In the Appeals Review consultation, regulators identified the need for opportunities to meet, learn from, and exchange views with those who lead or sit on appeal tribunals. There are many benefits to an exchange of perspectives between a tribunal and its stakeholders, providing it is accomplished in a way that does not compromise independent decision-making in individual cases.

There are many benefits to an exchange of perspectives between a tribunal and its stakeholders, providing it is accomplished in a way that does not compromise independent decision-making in individual cases.

In the 1980s, the former Workers Compensation Appeals Tribunal (WCAT) involved stakeholders in the initial design of tribunal procedures.[65] This cooperation helped that tribunal to avoid some pitfalls and to institute rules that worked well for its users. For example, with input from its stakeholders, the WCAT adopted rules and physical layouts for hearing rooms that enhanced the accessibility of the hearing process.

The AJWG report recommends that each tribunal chair establish a Tribunal Advisory Committee (TAC) that would meet at least twice a year to provide input on key tribunal policies and procedural rules. The committees would also participate in the development and review of the qualification criteria to be applied in selecting members of the tribunal.[66]

For the proposed appeal tribunal, the TAC could include regulators, members of the bar who appear before the tribunal, and advocacy groups representing professionals, including internationally educated professionals. The TAC would meet with the tribunal both regularly and as needed. The TAC would provide input to the Chair on key tribunal policies, procedural rules, and criteria for member selection. The TAC would be a consultative group. It would have no role in commenting on cases or substantive legal matters. Establishing a TAC for the appeal tribunal would help to enhance accessibility, transparency, and accountability and would provide a vehicle for stakeholders to liaise with the appeal body in a structured way.

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[65] Now called the Workplace Safety and Insurance Appeal Tribunal (WSIAT).

[66] Administrative Justice Working Group, "Recommendations to Improve the Appointments Process for Ontario Non-Regulatory Tribunals" (February 2005), page 3. The paper is unpublished but can be obtained from the co-chairs, Alec Farquhar (alec.farquhar@mol.gov.on.ca) and Kathy Laird (lairdk@lao.on.ca).

Recommendation 23
REPORTING AND LIAISON

The independent appeal tribunal's annual report should comment on systemic issues arising from appeals of professional registration decisions.

The tribunal should meet at least twice a year with a multi-stakeholder group to receive policy advice and input.

9.6 Further Appeal to the Courts

While there are currently few appeals to the courts from tribunals on registration matters, such appeals represent an important final appeal mechanism; in particular, they help to shape the law. Therefore, we recommend that appeals to the courts remain possible. However, such appeals should be more narrowly focused on questions of mixed fact and law or law alone. As well, the courts should be limited to the remedies available to the proposed tribunal, with the added power to refer the matter back to the tribunal with directions. Currently, in appeals from HPARB decisions, the courts have much wider powers although they seldom exercise them. As noted earlier, the courts, like the tribunals, defer to regulatory bodies on questions of professional judgment.

Recommendation 24
FURTHER APPEAL TO THE COURTS

Parties should be entitled to appeal decisions of the appeal tribunal to the Divisional Court on questions of law or mixed fact and law.

The courts should be empowered to order what the tribunal could have ordered and should also have the option of sending the matter back to the tribunal with directions.

9.7 Challenging Discrimination

Discriminatory treatment has been alleged by internationally educated professionals in Ontario and elsewhere. Section 6 of Ontario's *Human Rights Code* guarantees equal treatment "with respect to membership in any ... self-governing profession." Section 15 of the *Charter* prohibits unequal treatment on certain grounds such as race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. These laws have been interpreted and applied in cases that raised entry to practice issues. There are a number of unsettled legal issues concerning application of these laws. These issues are beyond the scope of this review; nonetheless, it is important that applicants have viable vehicles by which to raise these matters.

The question of where these issues can and should be raised has been and continues to be the subject of much litigation. For example, a case now before the Supreme Court of Canada will consider which body is the most appropriate forum in which to raise alleged violations of the *Human Rights Code*: a tribunal or the Human Rights Commission.[67]

While the matter is still in some doubt, it appears that HPARB does have jurisdiction to hear claims of discrimination. The lack of significant human rights and *Charter* cases before HPARB may reflect the fact that those raising such issues generally prefer to go to the courts and the Human Rights Commission, where broader remedies are available. Nevertheless, we see no reason why the proposed tribunal should not have jurisdiction to consider these matters.[68]

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[67] At the time of writing, the case of *Tranchemontagne v. Director of Ontario Disability Support Program* (2004), 244 D.L.R. (4th) 118 (Ont. C.A.), is set to go to the Supreme Court of Canada. This case deals with whether the Human Rights Commission or the Social Benefits Tribunal is the appropriate body in which to raise an allegation of breach of the *Human Rights Code*.

[68] Mary Cornish and her colleagues have written an instructive paper on issues of discrimination in respect to internationally educated professionals: Mary Cornish, Elizabeth McIntyre, and Amanda Pask, *Strategies for Challenging Discriminatory Barriers to Foreign Credential Recognition*, January 2000; originally presented to the National Conference – Shaping the Future: Qualification Recognition in the 21st Century, October 12-15, 1999, Toronto; online at http://www.cavalluzzo.com/publications/newsletters/access_website.PDF.

CHAPTER 10
IMPLEMENTATION

10.1 Implementation Issues

The tasks required to achieve fair registration processes involve developmental work, consultation, and collaboration over a period of time. Some examples are launching and evaluating pilot projects; building the capacity to conduct reviews of registration practices; identifying a mechanism to verify promising practices; conducting research on promising practices in Ontario, Canada, and other jurisdictions; developing the Fair Registration Practices Code; and coordinating requests from regulators for additional statutory and regulatory change to improve their registration processes.

Implementation activities to establish the independent appeals body will include coordinating requests from regulatory bodies for statutory and regulatory changes required to implement the tribunal; design and establishment of the tribunal in consultation with stakeholders; and selection and training of qualified adjudicators.

Implementation of the independent appeal body would be the responsibility of the following ministries, in consultation with ministries responsible for legislative policy pertaining to individual professions, regulatory bodies, HPARB, LAT, and other stakeholders.

Ministry of Attorney General

- establishing the new appeal body as an adjudicative agency of the ministry

Ministry of Health and Long-Term Care

- transition regarding health professions and HPARB

Ministry of Government Services (formerly Ministry of Consumer and Business Services)

- transition regarding the non-health professions that currently have registration appeals under LAT

Ministry of Training, Colleges and Universities

- overall implementation of this Appeals Review report

10.2 Implementation Mechanism

The recommended fair registration practices and independent appeals mechanism are unlikely to be achieved without a dedicated implementation mechanism.

A concerted effort will be required by government, regulatory bodies, and others to achieve the vision that this report sets out for the benefit of qualified applicants to the professions, regulatory bodies, and, most important, the Ontario public. In our view, the recommended fair registration practices and independent appeals mechanism are unlikely to be achieved without a dedicated implementation mechanism. Therefore, we recommend that an implementation body be established, assisted by a stakeholder advisory committee. Staffing for the body would be provided by the designated lead ministry.

The implementation body, with advice from the advisory committee, would be instrumental in ensuring collaboration, coordination, and support for the recommended fair registration practices. This task would include developing the Fair Registration Practices Code, designing a mechanism to collect and verify promising practices, funding and evaluating pilot projects, and designing other supports

Recommendation 25
IMPLEMENTATION MECHANISM

An implementation body should be established for a three-year period to support implementation of the recommendations in this report for fair registration practices and for an independent mechanism for the appeal of registration decisions.

A stakeholder advisory committee should be established to provide advice on implementation.

The implementation body should receive staff support from the lead ministry.

APPENDIX A
SUMMARY OF RECOMMENDATIONS

Recommendation 1
ELEMENTS OF FAIR REGISTRATION PRACTICES

Fair registration practices should include the following elements in order to minimize the volume of independent appeals and to lay the foundation for effective appeals where necessary.

Information and Support for Applicants

- accessible information about the registration and appeal processes
- published criteria for deciding whether entry-to-practice requirements have been met and examples of when exemptible requirements could be exempted
- support for applicants during the registration process, including any internal appeal or review, provided by regulators, other organizations, or both

Registration Procedures

- reasonable fees
- timeliness
- alternative ways to confirm credentials or demonstrate competency when documents are unobtainable
- access to documents held by the regulatory body that pertain to the registration application, with exceptions for public safety reasons or where disclosure would undermine the integrity of an assessment process
- training for council members and staff who evaluate qualifications and make registration decisions

Assessments by Third Parties

- procedural protections when regulators rely on third party assessments of credentials, language skills, or competency

Internal Appeal or Review

- arm's-length internal appeal or review process

- notification of the basis for the initial or proposed registration decision
- the right to a hearing or the opportunity to meet with at least one decision-maker
- the right to make written submissions

Registration Decisions and Reasons

- clear registration decisions with sufficient reasons for the decision

Recommendation 2
ACHIEVING FAIR REGISTRATION PRACTICES

The following measures should ensure that the objective of having fair and effective registration practices is achieved across the regulated professions.

- Establish a Fair Registration Practices Code in statute or regulation that sets out basic requirements for all regulators in the registration process.
- Collect, verify, disseminate, and update promising registration practices and innovative techniques that regulators can consider as ways to achieve the Code requirements.
- Pilot test and evaluate different ways to achieve certain elements of fair registration, such as providing support to applicants, allowing meetings with at least one decision-maker, and conducting reviews of registration pratices.
- Develop how-to guides and other supports for regulators in achieving certain elements of fair registration, such as guidelines on developing measurable criteria for deciding whether registration requirements have been met, criteria for reviews of registration practices, and generic or cross-sector training modules for decision-makers.
- Introduce a requirement in the Fair Registration Practices Code that regulators periodically review and make improvements to their registration practices, on the basis of the Code, the recommendations in this report, and the published inventory of innovative and promising registration practices.
- Foster collaboration between government and regulators, with government providing technical assistance and some financial support to achieve the above five measures, to ensure fair registration practices.

Recommendation 3
INFORMATION FOR APPLICANTS

The Fair Registration Practices Code should require regulators to make information available to applicants, including internationally educated applicants, about the registration, internal appeal, and independent appeal or review processes.

In implementing this portion of the Code, regulators should evaluate, from the perspective of the user, the effectiveness of existing measures to provide information to applicants and should consider additional ways to make information available, including to persons overseas.

Recommendation 4
CRITERIA FOR DECISION-MAKING

The Fair Registration Practices Code should require regulators to publish:

- criteria they will use for deciding whether entry-to-practice requirements have been met; and
- examples of situations where exemptible entry-to-practice requirements could be exempted.

In implementing this portion of the Code, regulators should:

- review and clarify criteria for decision-making, and ensure that published criteria are understandable and measurable where possible;
- provide examples of where exemptible requirements could be exempted, or seek statutory change to make non-exemptible any currently exemptible requirements that, in practice, are never exempted.

With government support, training or how-to-guides should be developed that would assist regulators in developing and publishing criteria for decision-making.

Recommendation 5
SUPPORT FOR APPLICANTS

With government support, different ways of supporting applicants during the registration process, including through outside organizations, should be tested.

Recommendation 6
REASONABLE COST

The Fair Registration Practices Code should require regulators to ensure that application and registration costs are reasonable so they do not deter qualified applicants from pursuing registration or appeals of registration decisions.

In implementing this portion of the Code, regulators should review fees for reasonableness.

Recommendation 7
TIMELINESS

The Fair Registration Practices Code should require regulators to establish and publish times within which the registration process should be completed.

In implementing this portion of the Code, regulators should set and publish timelines and develop policies and practices to ensure that the timelines are met and registration is completed within a reasonable time.

Recommendation 8
ALTERNATIVE EVIDENCE OF UNOBTAINABLE DOCUMENTS

The Fair Registration Practices Code should require regulators to offer alternative methods of confirming credentials or demonstrating competency where relevant documents cannot be obtained for reasons beyond the applicant's control.

In implementing this portion of the Code, regulators should design and implement alternative processes where they do not currently exist.

Recommendation 9
ACCESS TO DOCUMENTS ON FILE

The Fair Registration Practices Code should require regulators to provide applicants with all documents held by the regulator that pertain to their applications, on request, with exceptions for security reasons or for instances when disclosure would undermine the integrity of an assessment process.

In implementing this portion of the Code, regulators should design and implement policy and procedures for responding to requests by applicants for access to their files.

Recommendation 10
TRAINING FOR DECISION-MAKERS

The Fair Registration Practices Code should require regulators to develop and implement training plans for council members and staff who evaluate qualifications and make registration decisions.

In implementing this portion of the Code, regulators should develop the content of training plans and implement the training.

With government support and collaboration, generic training materials should be developed to help minimize costs.

Recommendation 11
ASSESSMENTS BY THIRD PARTIES

The Fair Registration Practices Code should require that regulatory bodies that rely on third party assessments of professional competence, equivalence of academic credentials from other jurisdictions, or language proficiency assure themselves that the third parties provide procedural protections including, as applicable:

- published criteria for decision-making
- written decisions
- reasons indicating the basis for unsuccessful assessments
- right of internal review or appeal
- provision to retake tests or exams

In implementing this portion of the Code, regulators should make their expectations clear and reach agreements with third party assessment bodies.

Recommendation 12
INTERNAL APPEAL OR REVIEW

The Fair Registration Practices Code should require that regulators:

- provide the opportunity for internal appeal or review of decisions or proposals to refuse registration or impose conditions;
- inform applicants of initial decisions or proposals to deny registration or impose conditions along with sufficient reasons for the decisions or proposals; and

- ensure that reviews are conducted by persons who were not involved in the initial decisions or proposals.

The Fair Registration Practices Code should also require that internal appeals or reviews provide the opportunity for an applicant to:

- make written submissions; and
- attend a hearing before the decision-makers or meet with at least one decision-maker before the registration decision is made.

The Fair Registration Practices Code should further require that the annual reports of professional regulatory bodies include non-identifying statistics on internal registration reviews or appeals as well as the outcomes of matters referred back to the regulator by the independent appeals tribunal.

In implementing this portion of the Code, regulators should:

- design and implement an internal appeal or review process where it does not exist, and consider refinements where it does;
- where oral hearings are provided, ensure that training for decision-makers includes help on how to hold efficient, effective hearings; and
- where meetings with a decision-maker are offered, develop policies and training to enable decision-makers to conduct such meetings effectively.

Recommendation 13
REGISTRATION DECISIONS AND REASONS

The Fair Registration Practices Code should require that:

- registration decisions be in writing; and
- when the regulator refuses registration or imposes conditions, the decision contain sufficient reasons for the applicant to know the basis for the decision and specifies the deadline for filing a notice of appeal to the independent appeals body.

In implementing this portion of the Code, regulators should provide skills-based training on how to write clear decisions and reasons.

Recommendation 14
REVIEWS OF REGISTRATION PRACTICES

The Fair Registration Practices Code should require that regulators:

- conduct a review of their registration practices every three years, to evaluate the effectiveness of the prescribed practices and to identify areas for further improvements; and
- file reports on reviews of registration practices, along with reports on measures taken to improve the registration process, with the responsible ministry; these reports should be publicly available.

In implementing this portion of the Code, regulators should determine how to conduct effective reviews within the context of their profession.

With government support and collaboration, guidelines should be developed for reviews of registration practices and for building the capacity to conduct them.

Recommendation 15
"PRIMARY ACCESS" BRIDGING PROGRAMS

Bridging programs that constitute the primary route of access to a regulated profession for internationally educated applicants should provide the following procedural protections, where relevant to their processes:

- publication of criteria for decision-making
- constructive feedback to unsuccessful applicants on request
- training of those making clinical assessments
- support to applicants in navigating the system and assessing their options, to be provided by program partners or other organizations
- quality assurance mechanisms for clinical or situational assessments, such as the use of videotaping

Recommendation 16
APPEALABLE DECISIONS

Applicants for professional registration should be able to appeal the following decisions to the independent appeal body:

- decisions to deny registration
- decisions to grant or deny provisional, limited, or conditional registration

- lack of registration decisions within a reasonable time
- refusals to accept or process applications

Recommendation 17
GROUNDS OF APPEAL

Applicants should be able to appeal registration decisions through evidence that establishes that the regulatory body made an error of law, an error of fact, or an error of mixed fact and law. These grounds of appeal would include procedural error that resulted in prejudice to the applicant, and reasonable apprehension of bias.

Recommendation 18
NOTICE OF APPEAL

The notice of appeal should specify the reasons for the appeal so that all parties and the tribunal understand the nature and scope of the appeal.

Recommendation 19
REMEDIES ON APPEAL

The remedies available in an independent registration appeal should be based on the following principles:

- When professional expertise is required to determine the matter under appeal, the independent appeal body should either uphold the decision or refer the matter back to the regulatory body with recommendations.
- When the appeal tribunal finds that an error has been made on a matter that does not require professional expertise to determine, and the tribunal finds that the applicant qualifies for registration, it could order registration of the applicant, with or without conditions. Such authority would be exercised most often in situations involving straightforward questions of fact.

Recommendation 20
PROCEDURAL ELEMENTS OF INDEPENDENT APPEAL

The following elements should be included in the independent appeal process for professional registration decisions:

- clear information on the appeal process, available to applicants
- support for self-represented applicants
- established timelines for completing registration appeals
- option for applicants to choose paper review or in-person hearing
- reasonable fees that do not deter applicants
- reasonable disclosure of evidence by both parties and an opportunity for the regulator to revise its decision on the basis of new evidence prior to the appeal hearing
- pre-hearing processes to clarify or resolve issues, conducted by a separate adjudicator and not mandatory for the applicant
- flexible hearings, focusing on alleged errors, in which the tribunal can receive new evidence but can also allow the regulatory body to revise its decision in light of that evidence
- a single adjudicator, except when the Chair assigns a three-member panel for cases that raise significant, new, or difficult questions
- clear written decisions and reasons

Recommendation 21
ADJUDICATORS

The government should recruit qualified adjudicators for an independent appeal tribunal through a transparent, competitive order-in-council appointment process, with a per diem that adequately reflects the level of skill required.

Adjudicators should not preside over appeals involving the profession of which they are a member, with a possible exception for lawyers.

The tribunal should provide its adjudicators with effective training for their role.

Recommendation 22
STRUCTURE AND LOCATION OF APPEAL BODY

A single appeal tribunal should be established as an adjudicative agency reporting to the Ministry of the Attorney General, to conduct independent registration appeals for Ontario's self-regulated professions.

Recommendation 23
REPORTING AND LIAISON

The independent appeal tribunal's annual report should comment on systemic issues arising from appeals of professional registration decisions.

The tribunal should meet at least twice a year with a multi-stakeholder group to receive policy advice and input.

Recommendation 24
FURTHER APPEAL TO THE COURTS

Parties should be entitled to appeal decisions of the appeal tribunal to the Divisional Court on questions of law or mixed fact and law.

The courts should be empowered to order what the tribunal could have ordered and should also have the option of sending the matter back to the tribunal with directions.

Recommendation 25
IMPLEMENTATION MECHANISM

An implementation body should be established for a three-year period to support implementation of the recommendations in this report for fair registration practices and an independent mechanism for the appeal of registration decisions.

A stakeholder advisory committee should be established to provide advice on implementation.

The implementation body should receive staff support from the lead ministry.

APPENDIX B
REGULATED PROFESSIONS

Regulated Profession	Relevant Ministry	Type of Statute	Regulatory Body
Architecture	Attorney General	Public statute	Ontario Association of Architects
Audiology and Speech-Language Pathology	Health and Long-Term Care	Public statute	College of Audiologists and Speech-Language Pathologists of Ontario
Certified Engineering Technicians and Technology	Not applicable	Private statute	Ontario Association of Certified Engineering Technicians & Technologists
Certified General Accounting	Attorney General	Private statute	Certified General Accountants Association of Ontario
Certified Management Accounting	Attorney General	Private statute	The Society of Management Accountants of Ontario
Chartered Accounting	Attorney General	Unconsolidated public statute	The Institute of Chartered Accountants of Ontario
Chiropody and Podiatry	Health and Long-Term Care	Public statute	College of Chiropodists of Ontario
Chiropractic	Health and Long-Term Care	Public statute	College of Chiropractors of Ontario
Dental Hygiene	Health and Long-Term Care	Public statute	College of Dental Hygienists of Ontario
Dentistry	Health and Long-Term Care	Public statute	Royal College of Dental Surgeons of Ontario
Dental Technology	Health and Long-Term Care	Public statute	College of Dental Technologists of Ontario
Denturism	Health and Long-Term Care	Public statute	College of Denturists of Ontario
Dietetics	Health and Long-Term Care	Public statute	College of Dietitians of Ontario
Forestry	Natural Resources	Public statute	Ontario Professional Foresters Association
Funeral Services	Government Services (formerly Consumer and Business Services)	Public statute	Board of Funeral Services
Geoscience	Northern Development and Mines	Public statute	Association of Geoscientists of Ontario
Land Surveying	Natural Resources	Public statute	Association of Ontario Land Surveyors

Regulated Profession	Relevant Ministry	Type of Statute	Regulatory Body
Law	Attorney General	Public statute	Law Society of Upper Canada
Massage Therapy	Health and Long-Term Care	Public statute	College of Massage Therapists of Ontario
Medical Laboratory Technology	Health and Long-Term Care	Public statute	College of Medical Laboratory Technologists of Ontario
Medical Radiation Technology	Health and Long-Term Care	Public statute	College of Medical Radiation Technologists of Ontario
Medicine	Health and Long-Term Care	Public statute	College of Physicians and Surgeons of Ontario
Midwifery	Health and Long-Term Care	Public statute	College of Midwives of Ontario
Nursing	Health and Long-Term Care	Public statute	College of Nurses of Ontario
Occupational Therapy	Health and Long-Term Care	Public statute	College of Occupational Therapists of Ontario
Opticianry	Health and Long-Term Care	Public statute	College of Opticians of Ontario
Optometry	Health and Long-Term Care	Public statute	College of Optometrists of Ontario
Pharmacy	Health and Long-Term Care	Public statute	Council of the Ontario College of Pharmacists
Physiotherapy	Health and Long-Term Care	Public statute	College of Physiotherapists of Ontario
Professional Engineering	Attorney General	Public statute	Professional Engineers Ontario
Psychology	Health and Long-Term Care	Public statute	College of Psychologists of Ontario
Real Estate and Business Brokerage	Government Services (formerly Consumer and Business Services)	Public statute	Real Estate Council of Ontario
Respiratory Therapy	Health and Long-Term Care	Public statute	College of Respiratory Therapists of Ontario
Social Work and Social Service Work	Community and Social Services	Public statute	Ontario College of Social Workers & Social Service Workers
Teaching	Education	Public statute	Ontario College of Teachers
Veterinary Medicine	Agriculture and Food	Public statute	College of Veterinarians of Ontario

APPENDIX C
CONSULTATION PARTICIPANTS

The following organizations participated in the formal consultation process in the Appeals Review.

Consultation Meetings

Health Regulators

College of Audiologists and Speech-Language Pathologists of Ontario

College of Chiropodists of Ontario

College of Chiropractors of Ontario

College of Dental Hygienists of Ontario

College of Dieticians of Ontario

College of Massage Therapists of Ontario

College of Medical Laboratory Technologists of Ontario

College of Medical Radiation Technologists of Ontario

College of Nurses of Ontario

College of Occupational Therapists of Ontario

College of Opticians of Ontario

College of Optometrists of Ontario

College of Physicians and Surgeons of Ontario

College of Physiotherapists of Ontario

College of Psychologists of Ontario

College of Respiratory Therapists of Ontario

Ontario College of Pharmacists

Royal College of Dental Surgeons of Ontario

Non-Health Regulators

Association of Ontario Land Surveyors

Association of Professional Geoscientists of Ontario

Board of Funeral Services

Certified General Accountants of Ontario

College of Veterinarians of Ontario

Institute of Chartered Accountants of Ontario

Law Society of Upper Canada

Ontario Association of Architects

Ontario Association of Certified Engineering Technicians and Technologists

Ontario College of Social Workers and Social Service Workers

Ontario College of Teachers

Ontario Professional Foresters Association

Professional Engineers Ontario

Real Estate Council of Ontario

The Society of Management Accountants of Ontario

Tribunals

Health Professions Appeal and Review Board

Licence Appeal Tribunal

Professional Associations

Association of Dental Technologists of Ontario

Ontario Association of Medical Radiation Technologists

Ontario Association of Optometrists

Ontario Association of Social Workers

Ontario Bar Association

Ontario Dental Association

Ontario Massage Therapist Association

Ontario Psychological Association

Ontario Society of Chiropodists

Ontario Society of Medical Technologists

Ontario Society of Professional Engineers

Ontario Veterinary Medical Association

Community Organizations

Association for Access to the Professions of Planning and Architecture (AAPPA)

Association of International Physicians and Surgeons of Ontario (AIPSO)

Council for Access to the Profession of Engineering (CAPE)

Council of Agencies Serving South Asians (CASSA)

Maytree Foundation

Policy Roundtable Mobilizing Professions and Trades (PROMPT)

The Access Project (TAP)

Ministries

Ministry of Agriculture and Food

Ministry of the Attorney General

Ministry of Citizenship and Immigration

Ministry of Community and Social Services

Ministry of Consumer and Business Services

Ministry of Economic Development and Trade

Ministry of Education

Ministry of Finance

Ministry of Health and Long-Term Care

Ministry of Natural Resources

Ministry of Northern Development and Mines

Ministry of Training, Colleges and Universities

Information Templates

Templates Received

Association of Ontario Land Surveyors

Board of Funeral Services

Certified General Accountants of Ontario

College of Audiologists and Speech-Language Pathologists of Ontario

College of Chiropodists of Ontario

College of Chiropractors of Ontario
College of Dental Hygienists of Ontario
College of Dental Technologists of Ontario
College of Dietitians of Ontario
College of Massage Therapists of Ontario
College of Medical Laboratory Technologists of Ontario
College of Medical Radiation Technologists of Ontario
College of Midwives of Ontario
College of Nurses of Ontario
College of Occupational Therapists of Ontario
College of Opticians of Ontario
College of Optometrists of Ontario
College of Physicians and Surgeons of Ontario
College of Physiotherapists of Ontario
College of Psychologists of Ontario
College of Respiratory Therapists of Ontario
College of Veterinarians of Ontario
Institute of Chartered Accountants of Ontario
Law Society of Upper Canada
Naturopathy – Board of Directors of Drugless Therapy
Ontario Association of Architects
Ontario Association of Certified Engineering Technicians and Technologists
Ontario College of Pharmacists
Ontario College of Social Workers and Social Service Workers
Ontario College of Teachers
Ontario Professional Foresters Association
Professional Engineers Ontario
Real Estate Council of Ontario
Royal College of Dental Surgeons of Ontario
The Society of Management Accountants of Ontario

Written Submissions

Submissions Received

Association of International Physicians and Surgeons of Ontario (AIPSO)

Council for Access to the Profession of Engineering (CAPE)

Dieticians of Canada

Law Society of Upper Canada

Policy Roundtable Mobilizing Professions & Trades (PROMPT)

Submission from one individual

APPENDIX D OTHER JURISDICTIONS

This appendix outlines the Appeals Review's research findings on other jurisdictions. Two initiatives are highlighted: Australia's appeal guidelines and Quebec's program of support to immigrants. Brief summaries of other findings follow.

D.1 Australia's Appeal Guidelines

D.1.1 Best Practice Guidelines

Australian Education International through the National Office of Overseas Skills Recognition (AEI-NOOSR) is the Australian government's expert and coordinating body on the recognition of qualifications gained outside Australia. AEI-NOOSR offers a range of information, advisory, training and support services for individuals and organizations regarding qualifications assessment and recognition.[69] It assists the 33 Australian regulatory bodies to develop best practices.

AEI–NOOSR has produced *The Best Practice Guide for Professional Bodies* as an aid to professional bodies in Australia that undertake assessment of applicants wishing to migrate to Australia under the Skilled Migration Program. The guide includes best practices for establishing appeal processes in the professions as part of an effective assessment process.[70]

The guide is currently under review.

D.1.2 The Importance of Appeals

The *Best Practice Guide* articulates the importance of well-defined and equitable procedures for the review of decisions, especially in the case of "assessment processes which impact on the employment and other prospects for the individual candidate" (page 10). This document emphasizes the importance of having a clearly articulated appeals process for the following reasons:

- To protect both the client and the profession – in the interests of the integrity of the profession and of equity towards those who belong or seek to belong to it, applicants must have a clearly established and known means of ensuring that procedures are equitable and that potential errors are able to be redressed;
- An appeals process enables the assessing body to monitor the effectiveness of its procedures and ensure continuous improvement;

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[69] AEI-NOOSR's website is at: http://aei.dest.gov.au.

[70] Australia, Commonwealth Department of Employment, Education, Training and Youth Affairs, *The Best Practice Guide for Professional Bodies* (Canberra: J.S. McMillan Printing Group, 1997).

- A clear and readily understandable appeals process does much to allay any fears of perceived bias against individuals who hold overseas qualifications by assessment and recognition authorities;
- Where appeal procedures are clearly defined from the outset, there is less likelihood of frivolous appeals or time consuming complaints arising from misunderstanding of the process; and
- Modern administrative practice (and frequently, legislation) demands the ability to review processes and demonstrate that they are fair, transparent, workable and reflect the principles of natural justice. (page 10)

Further, in designing an appeal process for the professions, the Australian *Best Practice Guide* recommends consideration of the following question:

- How can the best balance between equity, efficiency and resources be achieved? It is important to streamline the process in so far as is consistent with thoroughness and equity so as to avoid cumbersome processes, protracted delays and unnecessary expense. (page 20)

The guide does not recommend appeals of the entry-to-practice standards, noting that professions would be "unwilling to consider appeals based on the claim that their standards are too high" (page 21).

D.1.3 Pre-Appeal Resolution

The *Best Practice Guide* recommends that a mechanism be put in place to "ensure that preliminary investigation of complaints can be carried out and any administrative errors rectified without need for the formal appeals process to be activated" (page 20).

If the matter cannot be resolved at the administrative level, the guide suggests a mandatory counselling process before a formal appeal is considered. Counselling could take the form of feedback on examination performance or "clarification of factors considered in the assessment process and an explanation of how the candidate's qualifications fall short of the requirements" (page 20).

D.1.4 Internal and External Appeals

The first formal appeal would be an in-house review by persons not involved in the initial assessment. The final stage would involve convening "a review panel independent of the original assessing body" (pages 21–22).

D.1.5 Information on Appeals Process

The guide also recommends that the existence of the appeals process be widely known within the profession and be mentioned in any preliminary information provided to those inquiring about assessment.

D.1.6 Evaluation

Australia's *Best Practice Guide* is currently being reviewed and revised to ensure that it is up to date with changes in the Australian migration program and that its suggestions on processing applications and advising clients reflect current good practice. No survey has been done of the use of the document by assessing authorities although they will be directly consulted in the process of revising the guide. The Guidelines for Appeal Processes in the Professions will be reviewed as part of this process, to ensure that they provide a comprehensive outline of regulatory and legislative requirements in Australia, possible review pathways, and good practice in conveying this information to clients.

D.2 Quebec's Support to Immigrant Applicants

D.2.1 Information Service

In 2002, the Quebec Ministry of Immigration and Cultural Communities,[71] in collaboration with the Quebec Interprofessional Council and the professional orders (regulatory bodies), established an information service on regulated professions called the Service d'information sur les professions réglementées (SIPR).

The SIPR serves approximately 1,500 people a year with a team of five staff who are civil servants.[72] Staff usually meet clients in individual interviews and sometimes organize group information meetings. The SIPR also provides telephone and e-mail service.

The SIPR does not play any intermediary role in disputes between individuals and the professional order. Clients are advised that the SIPR has no responsibility for representing them in their dealings with the order, evaluating their files, or authenticating documents.

D.2.2 Information Provision

The main purpose of the SIPR is to assist immigrants seeking admission to professional orders by providing them with the information to make informed decisions about their application. The service provides information about:

- the Quebec regulatory system
- the jurisdiction of professions governed by professional orders in Quebec
- the procedure for admission to professions governed by professional orders
- documents required to prepare and submit an application for recognition of equivalence to the professional order contemplated

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[71] Ministère de l'Immigration et des Communautés culturelles du Québec.

[72] A coordinator, an advisor on access to the regulated professions, two socio-economic assistance officers, and a secretariat officer.

- fees involved in submitting the application, obtaining the licence, and professional registration

The SIPR office provides clients with information booklets related to the practice of their profession and additional tools to help people understand the procedure for admission to a professional order to which they must submit their application.

D.2.3 Advice and Referral

The SIPR helps clients determine to which professional order they should apply. If required, the service will help individuals to prepare the documentation associated with their application for registration. The service may help people who are not going to apply immediately for admission to a professional order with a brief exploration of other jobs in their field.

The SIPR also refers individuals to external resources that can meet their needs, such as French-language training courses, job search agencies, colleges and universities, the service for international academic credential assessment, and government offices.

D.2.4 Counselling

In 2004, at the request of the government, the SIPR provided specialized counselling to meet the needs of medical graduates from outside Canada and the United States who were resident in Quebec. SIPR counsellors met with international medical graduates to review available options for entering the labour force. Options included application for professional licensure to practise medicine in Quebec, taking studies in a related field, and career counselling.

D.2.5 Policy Advice

The SIPR's work with clients enables it to develop a good understanding of the problems with the admission of immigrants to professional orders, and to suggest measures to facilitate access to regulated professions.

D.2.6 Liaison

The SIPR has met individually with all the professional orders for which there is a significant demand from clients. Up to this point, SIPR staff have visited 30 of the 45 professional orders. Mechanisms for collaboration on specific projects have been established between some orders and the SIPR. Government offices, educational institutions, and community agencies have also been involved with the SIPR in certain projects.

D.3 Appeal and Review of Registration Decisions

D.3.1 Internal Appeals: Quebec

Regulations of the government of Quebec prescribe the equivalence standards to be applied by each order (i.e., regulatory body) in assessing applications for recognition of credentials and prior learning. Regulations specify that in the case of a refusal or a disagreement regarding the recognition of an equivalency, a candidate may request to be heard by the order. The review is an internal process conducted by staff and then by the administrative council of the order. The council's decision is final. Some orders also provide for review mechanisms that can be applied at various stages of the admission process (practical training, exam, etc.).[73]

D.3.2 Internal Appeals: British Columbia

When the registration committee of a regulated health profession in British Columbia refuses an application for registration, the applicant may apply in writing, within 30 days, to the board (governing council) of a health regulatory body for a review on the record. If in the opinion of the board there are special circumstances, the board may hear evidence that is not part of the record. After a hearing the board may confirm the decision of the registration committee, substitute a decision, or send the matter back to the registration committee with directions.[74]

D.3.3 Internal Appeals: Alberta

Typically, Alberta's statutes and regulations governing regulated professions refer to internal review of the initial registration decision by the council of the regulatory body. Very few statutes provide for further appeals to the courts. Appellants often are entitled to appear with counsel and make representations to the council when it hears the internal appeal. In considering an internal appeal or review, the council typically may make any decision that the registration committee or the registrar could make. In most cases, an appellant is required to make a written request within 30 days after receiving a notice of refusal with the reasons for the refusal. The request must state why, in the appellant's opinion, the application for registration should be approved.

Certification in the teaching profession is regulated by the Alberta Ministry of Education. The relevant statute provides for appeal from the initial decision by the registrar to the certification appeal committee. The decision of this committee is final.[75]

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[73] Quebec Ministry of Immigration and Cultural Communities, "Practice of a Profession Governed by a Professional Order," at http://www.immigrationquebec.gouv.qc.ca/anglais/employment/occupations.html.

[74] British Columbia Ministry of Health Services, "Legislation and Professional Regulation," at http://www.healthservices.gov.bc.ca/leg/.

[75] Alberta Human Resources and Employment, "Professions and Occupations," at http://www3.gov.ab.ca/hre/profsandoccs/.

D.3.4 Independent Appeals Tribunal: Quebec

The Professions Tribunal hears appeals primarily from disciplinary decisions of the various orders in Quebec.[76] Registration decisions cannot be appealed to the tribunal unless the right to practise a profession has been denied for specific reasons such as a medical condition, refusal to submit to a medical exam, criminal conviction, or having been disciplined by the professional body. Therefore, registration decisions dealing with equivalency assessments (of both education and training) and exams cannot be appealed to the tribunal.

D.3.5 Appeals to the Courts: British Columbia and Alberta

For the legal profession in British Columbia, there is a right of appeal from the regulator's decision on registration to the British Columbia Court of Appeal. An applicant for registration in a health profession may appeal the board's decision in a review on the record to the Supreme Court within 30 days.[77]

In the regulated health professions in Alberta, an applicant may appeal the council's internal appeal decision to the Alberta Court of Queen's Bench.

D.3.6 Ombudsman Review in Health Professions: British Columbia and Alberta

In 1993, the British Columbia ombudsman was given the authority to investigate complaints about health colleges. In May 2003, the ombudsman reported that a lack of resources meant that, in general, he could no longer carry out that part of his mandate.[78]

In Alberta, anyone who has been affected by the decisions of a health regulatory college can make a complaint to the ombudsman, after all appeal mechanisms within the college have been exhausted. The ombudsman can recommend a course of action to the college but cannot overturn a college decision. A college may, on the recommendation of the ombudsman, rehear any matter and reconsider any decision or recommendation, and it may quash, confirm, or vary the decision or recommendation or any part of it.[79]

D.3.7 Appeals of Academic Credential Assessment: Alberta

The International Qualifications Assessment Service (IQAS) at Alberta's Ministry of Advanced Education evaluates the education of individuals who obtained their education abroad and issues certificates of comparison to educational standards in a Canadian province.[80] The IQAS provides both internal reassessments and external appeals for the review of academic credential assessment results. The external appeal body, called the Assessment Working Group (AWG), is composed of representatives from postsecondary education institutions, professional associations, government departments, and employers. The AWG is an arm's-length body but it shares administrative resources with the IQAS.

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[76] Quebec Ministry of Justice, "The Tribunal des Professions," at http://www.justice.gouv.qc.ca/english/tribunaux/trib-prof-a.htm.

[77] British Columbia Ministry of Health Services, "Legislation and Professional Regulation," at http://www.healthservices.gov.bc.ca/leg/.

[78] British Columbia Office of Ombudsman, Acting in the Public Interest? Self-Governance in the Health Professions: The Ombudsman's Perspective, Special Report No. 24 to Legislative Assembly of British Columbia (May 2003); online athttp://www.ombud.gov.bc.ca/reports/Public_Reports/Special%20Reort%20No.%2024.pdf.

[79] Alberta *Health Professions Act*.

D.3.8 Reports on Registration Appeals: British Columbia

The 2003 B.C. ombudsman's report referred to a 1991 Royal Commission on Health Care, which observed that "despite the identical purpose of each self-regulating body," the professions were operating under different, inconsistent statutes and that these inconsistencies could lead to "significant, undesirable anomalies" in the regulation of the professions. Areas of greatest inconsistency noted by the commission include the "right of appeal" and "the requirement that an internal review take place prior to initiating an appeal to the Supreme Court and the requirements for such a review."[81]

The Health Professions Council of British Columbia issued a report in 2001 on its legislative review of 10 health professions. The report articulated the following core principle: "Applicants should have appropriate rights of appeal of decisions affecting their ability to register." The report further stated:

> Six of the health profession statutes reviewed by the Council do not contain an external right of appeal, though some provide for an internal appeal, usually to the college's board. One profession submitted that an external right of appeal is an unwarranted intrusion on a regulatory body's discretion to determine who may become a member of the professions. However, the trends in recent case law indicate that courts do defer to administrative tribunals acting within their area of expertise. Further, *given the serious implications of registration decisions which involve the right to practice one's profession, a health profession statute must contain an express right of external appeal from registration decisions.*[82]

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[80] The International Qualifications Assessment Service (IQAS): http://www.advancededucation.gov.ab.ca/iqas/iqas.asp.

[81] British Columbia Office of Ombudsman, *Acting in the Public Interest? Self-Governance in the Health Professions: The Ombudsman's Perspective*, Special Report No. 24 to Legislative Assembly of British Columbia (May 2003); online at http://www.ombud.gov.bc.ca/reports/Public_Reports/Special%20Reort%20No.%2024.pdf, pages 5–6.

[82] British Columbia Ministry of Health Services, Health Professions Council, *Safe Choices: A New Model for Regulating Health Professions in British Columbia*, Part II: Legislative Review (March 2001); online at http://www.healthservices.gov.bc.ca/leg/hpc/review/part-ii/index.html.

D.4 Coordination and Support

D.4.1 Office of the Professions: Quebec

The Office of the Professions of Quebec is a government agency whose mandate is to ensure that each professional order fulfills its function of protecting the public. It also serves as an advisory body to the government. The office exercises an oversight function. For example, it monitors the operation of mechanisms for evaluating professional competence, the ethics, and the finances of professional orders. The office also ensures that each order adopts the regulations required under the Professional Code. In addition, the office may set regulations establishing specific rules and standards by which all professional orders must abide. In certain circumstances, the office will investigate whether a professional order has failed to fulfill the obligations imposed by legislation and regulations.

D.4.2 Support to Internationally Educated Persons: Manitoba

The Credentials Recognition Program of Manitoba's Ministry of Labour and Immigration assists immigrants with professional or technical backgrounds in gaining recognition for education and work experience obtained outside Canada. The program offers financial assistance to offset the costs of assessment fees, books, and exams. It also offers wage assistance to employers who provide Canadian work experience required for applicants to become registered in their profession. The program also provides counselling and referral services to applicants.[83]

D.4.3 Stakeholder Support: British Columbia

In British Columbia, the International Qualifications Program was established at the Ministry of Community, Aboriginal and Women's Services to provide leadership and support to employers, regulatory bodies, professional and trade associations, unions, postsecondary institutions, and community service agencies, in order to fully utilize skilled immigrants in the province's labour market.[84]

D.4.4 Professional Code: Quebec

The Professional Code is the general law of the professional system in Quebec. The Code establishes the Office of the Professions of Quebec and the Quebec Interprofessional Council and identifies the professional orders that are subject to the Code. It also establishes the Professions Tribunal, which hears appeals, primarily relating to specified discipline matters. The specifics of professional regulation are contained in 25 individual statutes and approximately 500 related regulations.[85]

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[83] Manitoba Labour and Immigration, "The Credential Recognition Program," at http://www.gov.mb.ca/labour/immigrate/newcomerservices/7d.html.

[84] British Columbia Ministry of Community, Aboriginal and Women's Services, "The International Qualifications Program," at http://www.mcaws.gov.bc.ca/amip/iqp/index.htm.

D.4.5 Consolidated Statutes for Regulated Health Professions

Like Ontario, Alberta and British Columbia have consolidated statutes for health professions.

D.4.6 Round Table and Publications: Quebec

The Quebec government has established a round table on immigration and admission to professional orders.[86] Its purpose is to have the best practices that have already been adopted by certain orders put into general use, and to promote new approaches to facilitate the procedure for recognition of immigrants' skills.

In addition, the Ministry of Immigration and Cultural Communities has produced a brochure that provides general information on practising a profession governed by a professional order, information sheets for 45 regulated professions, and a kit on comparative evaluation for education received outside Quebec.[87]

Consultation on immigrants trained abroad and access to regulated professions and trades has been carried out by a working group of four parliamentarians.

D.5 Assessment and Quality Assurance

D.5.1 Medical Licensing Exam: United States

The United States Medical Licensing Examination (USMLE) for medical applicants includes a clinical examination sponsored by the Federation of State Medical Boards and the National Board of Medical Examiners. To maintain security and quality assurance in the clinical exam, the examination room is equipped with video cameras and microphones to record every patient encounter. Candidates who experience problems during the administration of the clinical assessment may make a written complaint within three weeks after the test date. The USMLE's website states:

Use of standardized patients is the key to fairness and objectivity. These individuals go through extensive training to minimize any bias that could interfere with the examination process. After each encounter, the patients record the examinee's performance using specific checklists and rating scales. Physicians and testing professionals watch samples of videotapes of the interactions to assure objectivity and fairness in the final scoring. Examinee notes are scored by trained physicians.[88]

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[85] Quebec Interprofessional Council, "The Professional System in Quebec," at http://www.professions-quebec.org/systeme_pro_ang.html#2.

[86] Table de concertation sur l'immigration et l'admission aux ordres professionnels

[87] Ministry of Immigration and Cultural Communities, "Working in Quebec," at http://www.immigration-quebec.gouv.qc.ca/anglais/employment/work-quebec.html.

The videotapes are retained for only a limited time and are not used to rerate candidates.

D.6 Mutual Recognition

D.6.1 European Union

The rights of EU citizens to establish themselves and to provide services anywhere in the European Union are fundamental principles of European Union law. Regulations that recognize professional qualifications of only a particular jurisdiction present obstacles to these fundamental freedoms. These obstacles are addressed by rules guaranteeing the mutual recognition of professional qualifications among member states.[89] The rules come in the form of directives that provide for automatic recognition of professional qualifications in the health sector.

The European Commission is responsible for day-to-day management of mutual recognition among member states.[90] The commission also coordinates a problem-solving network in which EU member states work together to solve cross-border problems, including problems associated with the recognition of professional qualifications and diplomas.[91]

The Network of National Academic Recognition Information Centres was created at the initiative of the European Commission. The centres provide advice and information on the academic recognition of diplomas and periods of study undertaken abroad.[92]

D.6.2 Canada's Agreement on Internal Trade

The Agreement on Internal Trade (AIT) was entered into by the federal, provincial, and territorial governments of Canada in 1994. The agreement provides for the free movement of goods, services, and investment in Canada. The AIT contains a chapter designed to facilitate labour mobility. The purpose is to enable any worker who is qualified for an occupation in one province to be given opportunities for employment in another province.

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[88] United States Medical Licensing Examination, at www.usmle.org.

[89] The work done by jurisdictions on mutual recognition has application for the recognition of international credentials. Considerable work has been done in this area both in Canada (for recognition among the provinces) and in the European Union (for recognition among member states). The Appeals Review has kept in mind the need to ensure that its recommendations do not adversely affect Canadian mutual recognition agreements, which establish frameworks for mutual recognition in various professions.

[90] European Commission, "Professional Qualifications," at http://europa.eu.int/comm/internal_market/qualifications/index_en.htm.

[91] SOLVIT is an online network in which member states address, without legal proceedings, problems caused by the misapplication of internal market law by public authorities; http://europa.eu.int/solvit/site/index.htm.

[92] Network of National Academic Recognition Information Centres (NARICs): http://europa.eu.int/comm/education/programmes/socrates/agenar_en.html.

Governments committed themselves to introducing measures to eliminate or reduce labour mobility barriers that impede access to employment opportunities: for example, unnecessary requirements affecting licensing, registration, or certification of workers already registered in the same occupation in another Canadian province. The governments agree that any measures adopted will relate principally to competence, will be publicly available, and will not result in unnecessary delay and costs. Governments may adopt different occupational standards; however, they must recognize the existing qualifications of workers. They must also compare their standards and develop mechanisms for workers to acquire any additional requirements they need to register or become licensed or certified, without duplicating the training and testing already done by the worker. Residency requirements are specifically not allowed.

Setting standards and the processes for application to professions remain the jurisdiction of each province. The appeal procedures recommended in this report are designed to enhance access to professions; therefore, they complement the purposes of the AIT.

To meet the objectives of the AIT, individual professional regulators are encouraged to enter into mutual recognition agreements (MRAs), which establish frameworks for mutual recognition in the various professions. These agreements typically set out procedural steps necessary for recognition in different Canadian jurisdictions, the standards that are common to all, and those requirements that are significant and unique to particular jurisdictions. Typically, as well, the professional regulators agree to cooperate, share information, and undertake the actions necessary to eliminate barriers. For example, dentistry, registered practical nursing, and medical laboratory technology have MRAs.

The agreement does not set the same standards in each province but rather provides a vehicle to reconcile standards. A professional from another province attempting to become licensed in Ontario who believes that the AIT or an MRA is not being complied with can complain. In Ontario, this complaint goes to the Policy Development and Intergovernmental Relations Unit of the Ministry of Training, Colleges and Universities. It will investigate and may intervene via the ministry involved to try to resolve the complaint informally. For example, if the matter concerned a registered practical nurse, it would be directed to the Ministry of Health and Long-Term Care, which has responsibility for the health professions, and that ministry would consult with the regulatory body that is responsible for registration and standard-setting for that profession. This mechanism is one of informal dispute resolution. If it does not resolve the issue, the province where the individual is currently registered can lodge a formal complaint under the AIT, on the applicant's behalf, against the province where the individual is applying for registration. If the matter is not satisfactorily resolved within 90 days or another agreed-upon time, the complaining province can elevate the complaint to a higher level, and an expert panel may be established to make a non-binding determination. This is not a legally binding process; it is intended to provide a mechanism to raise serious concerns politically. Few cases have been raised this way across Canada.

Ontario

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